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SUPREME CO[illegible] E UNITED STATES.

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No. 351. 98

JAMES L. SHARP, APPELLANT,

vs.

CHRISTOPH RIESSNER AND CHARLES E. MEIER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 8, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 351.

JAMES L. SHARP, APPELLANT,

vs.

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INDEX.

	Original.	Print.
Subpœna	1	1
Marshal's return	2	1
Bill of complaint	3	2
Consent and order for substitution	9	6
Appearance	11	6
Plea	13	6
Opinion on plea	17	8
Notice and proposed order of settlement	25	10
Answer	29	11
Stipulation to amend answer	48	22
Amendment to answer	48	23
Replication	50	23
Evidence for complainants in chief	53	24
Exhibit, assignment—Assignment of Hutchins to Sharp, April 18, 1881	53	24
Lee's threatening letter—Letter of Turner, Lee, and McClure to Sharp, April 28, 1881	55	25
Notice to take testimony	57	26
Testimony of James L. Sharp	58	26
Evidence for complainant in rebuttal	128	71
Testimony of Dr. T. O'Conor Sloane	129	72

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	Original.	Print.
Exhibit Patent—Letters Patent No. 177,334 granted A. B. Hutchins, May 16, 1876	136	76
Evidence for defendants in chief	139	76
Exhibits offered	140	78
Testimony of John A. Frey	142	80
Evidence for defendants in sur-rebuttal	157	88
Testimony of John A. Frey	158	88
Order allowing defendants to take certain evidence in sur-rebuttal	161	90
Hearing and submission	163	90
Consent to substitution	164	91
Opinion	165	91
Decree	169	93
Affidavit of service of appeal	172	93
Stipulation as to record on appeal	174	94
Stipulation and order as to exhibits	176	94
Petition of appeal	178	95
Bond	184	96
Affidavit of service of citation	191	97
Citation	193	99
Acknowledgment of service of citation	195	99
Clerk's certificate	196	99

1 The President of the United States of America to Chris-
[L. S.] toph Riessner, Adam Riessner, and Charles E. Meier, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit *court*, in equity, on the first Monday of June, A. D. 1881, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by James L. Sharp, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 30th day of April, in the year one thousand eight hundred and eighty-one, and of the Independence of the United States of America the hundred and fifth.

JOSEPH M. DEUEL, *Clerk.*

A. V. BRIESON,
Compl't's Sol'r.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of June, 1881, or the bill will be taken *pro confesso* against them.

J. M. D., *Clerk.*

2 (Endorsed.)

I hereby certify that on the 2d day of May, 1881, at the city of New York, in my district, I personally served the within subpœna upon the within-named Charles E. Meier by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

I hereby certify that on the 2d day of May, 1881, at the city of New York, in my district, I personally served the within subpœna upon the within-named Christoph Riesner at his dwelling-house and usual place of abode, No. 332 East 15th St., in the city of New York, by exhibiting the within original, and at the same time leaving a copy thereof with Mrs. Christoph Riesner, an adult person, who is a member *in* the family of said Christoph Reissner.

Dated May 19, 1881.

Adam Reisner not found.

LOUIS S. PAYN,
U. S. Marshal, S. D. N. Y.

F. B.

U. S. circuit court. Filed May 20th, 1881. Joseph M. Deuel, clerk.

3 Circuit Court of the United States for the Southern District of New York. In Equity.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER, ADAM RIESSNER, and CHARLES E. MEIER, Doing Business as C. Riessner & Co.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

James L. Sharp, residing and doing business in the city of New York, county and State of New York, and a citizen of the United States, brings this his bill of complaint against Christoph Riessner, Adam Riessner, and Charles E. Meier, doing business in the city of New York, county and State of New York, under the firm name and style of C. Riessner & Co., and who are, as your orator is informed and believes, citizens of the United States; and thereupon your orator complains and says:

That one Abner B. Hutchins was and is the original and first inventor of a new and improved hydrocarbon stove, fully described in the letters patent hereinafter mentioned, and which had not been known or used before said Abner B. Hutchins' said invention,

4 and which was not for more than two years before his application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allowance.

And your orator, on information and belief, further shows unto your honors that said Abner B. Hutchins, being so as aforesaid the first inventor and discoverer of said improvement in hydrocarbon stoves, did, on the 16th day of May, 1876, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 177,334, whereby there was granted and secured to Abner B. Hutchins, his heirs, administrators, or assigns, or intended so to be, for the term of 17 years from and after the date of said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, as set forth in said letters patent, which, or a duly certified copy of which, is ready here in court to be produced; and by virtue whereof said Abner B. Hutchins became and was, until April 18, 1881, the sole owner of all the rights and privileges granted and secured, or intended to be granted and secured, in and by said letters patent.

And your orator further shows unto your honors that afterwards, to wit, on or about the 18th day of April, 1881, the said Abner B. Hutchins, by an assignment in writing of that date, sold, assigned, and transferred unto your orator, James L. Sharp, all his, said Abner B. Hutchins', right, title, and interest in and to said invention and the letters patent therefor, and in and to all claims for damages and profits incurred by past infringements of said letters patent, and all

his right to sue for and recover such damages and profits, which said assignment was duly recorded in the Patent Office of the United States, as by said assignment, or a duly authenticated copy thereof, and the certificate of such recording thereto affixed, ready in court to be produced, will fully and at large appear.

And your orator further shows unto your honors that, by virtue of the premises, your orator became, and now is, the sole and exclusive owner of said letters patent and the inventions and im-
5 provements described therein, and of all the rights and privileges granted and secured, or intended to be granted and secured, thereby, and of the right to sue for and recover all claims for damages and profits caused by past infringements of said letters patent; and that your orator has invested and expended large sums of money, and has been to great trouble in and about said invention, and for the purpose of carrying on the business of manufacturing and selling hydrocarbon stoves and making the same profitable to himself and useful to the public; and that said invention has been, and is of great benefit and advantage, and that large quantities of hydrocarbon stoves were made according to said invention, and sold by your orator to the great advantage of the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator, and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented.

Yet the said defendants, well knowing the premises and the rights secured to your orator as aforesaid, but contriving to injure your orator and to deprive him of the benefits and advantages which might, and otherwise would, accrue unto your orator from said invention ever after the issuing of the letters patent as aforesaid, and before the commencement of this suit, did, as your orator is informed and believes, without the license or allowance and against the will of your orator, and in violation of your orator's rights, and in infringement of the aforesasd letters patent, at the aforesaid city of New York and elsewhere, unlawfully and wrongfully, and in defiance of the rights of your orator, make, construct, use, and vend to others to be used, the said invention, and did make, construct, use, and vend to others to be used, hydrocarbon stoves made according to and employing and containing said invention, and that said defendants and their confederates still continue so to do; and that they are threatening to make the aforesaid hydro-carbon stoves in large quantities, and to supply the market therewith, and to sell the same—

All in defiance of the rights acquired by and secured to your orator as aforesaid, and to your orator's great and irreparable loss and injury, and by which your orator has been and still is being
deprived of great gains and profits which he might and
6 otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed by the said defendants by and through their aforesaid unlawful acts and doings.

And your orator further shows unto your honors, on information

and belief, that said defendants have made and sold and caused to be made and sold large quantities of said hydrocarbon stoves, and have a large quantity on hand which they are offering for sale, and have made and realized large profits and advantages therefrom; but to what extent and how much exactly your orator does not know, and prays a discovery thereof; and your orator says that the use of the said invention by said defendants and their preparation for and avowed determination to continue the same, and their other aforesaid unlawful acts, in disregard and defiance of the rights of your orator, have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

And your orator further shows unto your honors that he has caused notice to be given to said defendants of said infringements, and of the rights of your orator in the premises, and requested said defendants to desist and refrain therefrom; but said defendants disregarded said notice and refused to desist from said infringements, and still continue to make and sell said hydrocarbon stoves without right.

And your orator prays that said defendants, Christoph Riessner, Adam Reissner, and Charles E. Meier, their firm of C. Riessner & Co., and their and each of their servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined provisionally and perpetually by the order and injunction of this honorable court from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said invention, or any part thereof, or any hydrocarbon stoves made in accordance therewith, or like or similar to those which said defendants have heretofore made; and that the said defendants may be decreed to pay the proffts unlawfully obtained by them by reason of the aforesaid infringement, and the damages thereby suffered by your orator and the costs of this suit; and that your orator may have
7 such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

And forasmuch as your orator can have no adequate relief, except in this court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their and each of their corporal oaths, according to their and each of their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises, and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to answer the interrogatory hereinafter contained, and may be compelled to account for and pay to your orator the profits by them acquired, and the damages suffered by your orator from the aforesaid unlawful acts, and may answer this interrogatory:

Interrogatory. How many hydrocarbon stoves, each containing a water vessel, with a perforated top plate and hot-air cylinder hinged to said perforated top plate, and a top perforated plate above the

hot-air cylinder, have said defendants made and sold since May 16, 1876, and how many have they now on hand, in violation of said letters patent?

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendants, Christoph Riessner, Adam Riessner, and Charles E. Meier, their firm of C. Riessner & Co., and their and each of their servants, agents, attorneys, and workmen, and each and every of them, as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendants, Christoph Riessner, Adam Riessner, and Charles E. Meier, commanding them by a certain day and under a certain penalty to be and appear in this honorable court,
8 then and there to answer the premises and to stand to and abide such order and decree as may be made against them.

And your orator will ever pray, &c.

(NOTE.—Each defendant is required to answer the interrogatory.)

JAS. L. SHARP.

A. V. BRIESEN,
Compl't's Sol'r and of Counsel.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

On this 30th day of April, 1881, before me personally appeared James L. Sharp, the above-named complainant, who, being by me first duly sworn, doth depose and say that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; and that he verily believes Abner B. Hutchins to be the original and first inventor of the invention and improvement described and claimed in the letters patent referred to in said bill of complaint.

JAS. L. SHARP.

Sworn to and subscribed before me this thirtieth day of April, 1881.

[SEAL.] WILLY G. E. SCHULTZ,
Notary Public, Kings Co., N. Y.

Certificate filed N. Y. Co.

Endorsed: United States circuit court, southern district of New York. James L. Sharp *vs.* Christoph Riessner, Adam Riessner, and Charles E. Meier. Bill in equity. A. V. Briesen, complainant's solicitor, 229 Broadway, New York. U. S. circuit court. Filed Ap'l 30th, 1881. Joseph M. Deuel, clerk.

9 United States Circuit Court, Southern District of New York.
In Equity.

JAMES L. SHARP *vs.* C. RIESSNER *et al.*

I hereby consent that Messrs. Briesen and Betts be substituted as solicitors for the complainant in the above-entitled case.

A. V. BRIESEN,
Sol'r for Compl't.

Ordered accordingly.

SAM'L BLATCHFORD.

Please take notice that we appear as solicitors for the complainant in the above-entitled case.

New York, May 21st, 1881.

BRIESEN & BETTS.

To J. M. Deuel, Esq., cl'k U. S. C. C., S. D. of N. Y.

10 Endorsed: U. S. circuit court, so. dist. of N. Y. James L. Sharp *vs.* C. Riessner *et al.* Notice of substitution. Briesen & Betts, sol'rs for compl't, 219 Broadway, N. Y. U. S. circuit court. Filed May 26th, 1881. Joseph M. Deuel, clerk.

11 U. S. Circuit Court, Southern District of New York.

JAMES L. SHARP *vs.* CHRISTOPH RIESSNER *et al.*

Please enter our appearance for Christoph Riessner and Charles E. Meier, two of the defendants herein, all questions of jurisdiction over either of the defendants being reserved.

Yours, &c.,

TURNER, LEE & McCLURE,
Solicitors for above Def'ts, 20 Nassau St., N. Y.

To Joseph M. Deuel, Esq., clerk U. S. circuit court, southern district of New York.

Dated June 6, 1881.

Endorsed: U. S. circuit court, southern district of New York.
12 James L. Sharp *vs.* Christoph Riessner *et al.* Appearance. Turner, Lee & McClure, sol'rs for def'ts within named, 20 Nassau St., N. Y. U. S. circuit court. Filed June 6, 1881. Joseph M. Deuel, clerk.

13 Circuit Court of the United States for the Southern District of New York. In Equity.

JAMES L. SHARP
vs.
CHRISTOPHER RIESSNER and CHARLES E. MEIER, Impleaded with Another.

The plea of Christopher Riessner and Charles E. Meier, defendants, to the bill of complaint of James L. Sharp, the plaintiff.

These defendants, by protestation, not confessing or acknowledg-

ing the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said bill, say:

That neither they nor either of them have, since the issuing of the letters patent set forth in said bill, ever made, constructed, used, or vended to others to be used, the invention described in said
14 letters patent number 177,334, or made, constructed, used, or vended to others to be used, hydrocarbon stoves made according to and employing and containing said invention.

And these defendants further deny that they or either of them have ever infringed upon or violated any exclusive right secured by said letters patent in any manner whatsoever.

All which matters and things these defendants do aver to be true, and they plead the same to the plaintiff's bill, and pray the judgment of this honorable court whether they should be compelled to make any other or further answer to the said bill; and they pray to be hence dismissed with their costs and charges in that behalf most wrongfully sustained.

CHRISTOPH RIESSNER,
By CHAS. E. MEIER.
CHAS. E. MEIER.

TURNER, LEE & McCLEURE,
Def'ts' Sol'rs.

I hereby certify that, in my opinion, the foregoing plea is
15 well founded in point of law.

B. F. LEE,
Of Counsel.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Charles E. Meier, being duly sworn, deposes and says that he is one of the defendants in the above-entitled cause, and is a copartner of the defendant, Christoph Riessner, in respect to the matters and things which are the subject of this cause; that the said Christoph Riessner has been absent in Europe ever since a time previous to the filing of the bill herein, which is the reason why he does not join in this affidavit; that the foregoing plea is not interposed for delay, and that it is true in point of fact.

CHAS. E. MEIER.

Subscribed and sworn to before me this 2nd day of July, 1881.
[L. S.] LOUIS M. FULTON,
Notary Public, City & Co. of N. Y.

16 Endorsed: U. S. circuit court, southern district of New York. James L. Sharp *vs.* Christoph Riessner and Charles E. Meier, impleaded with another. Orig'l plea. Turner, Lee & McClure, solicitors for defendants, 20 Nassau street, New York. U. S. circuit court. Filed Jul- 2, 1881. Joseph M. Deuel, clerk.

17 Circuit Court of the United States for the Southern District of New York.

JAMES L. SHARP

vs.

CHRISTOPHER REISSNER, ADAM REISSNER, and CHARLES E. MEIER.

BLATCHFORD, *J.*:

The bill in this case is brought for the infringement of a patent. The bill alleges that the defendant, without the license of the plaintiff, and in violation of his rights, and in infringement of the patent, did "make, construct, use, and vend to others to be used, the said invention," and did make, construct, use, and vend to others to be used, hydrocarbon stoves made according to and employing and containing said invention, and "have made and sold, and caused to be made and sold, large quantities of said hydrocarbon stoves."

Two of the defendants have put in a plea to the bill, which
18 sets forth "that neither they or either of them have, since the issuing of the letters patent set forth in said bill, ever made, constructed, used, or vended to others to be used, the invention described in said letters patent, * * * or made, constructed, used, or vended to others to be used, hydrocarbon stoves made according to and employing and containing said invention." The plea also denies that the defendants, "or either of them, have ever infringed upon or violated any exclusive right secured by said letters patent in any manner whatever." There is nothing else in the plea, and there is no answer to the bill or any part of it. The plaintiff moves that the plea be stricken from the files as improper, or else be ordered to stand as an answer. The defendants show, by affidavits, that they are advised and believe that the stoves they have made were not infringements
19 of the patent sued on; that by the advice of their counsel, and for the purpose of avoiding expense to both parties, the single defense of non-infringement was interposed in the form of a plea; that the defendants have other defences which they wish to embody in an answer, should it be necessary for them to answer, the most important of which defences are prior patents anticipating the plaintiff's patent, and also limiting its scope so as to render infringement impossible, and prior knowledge on the part of various individuals; and that to take evidence in regard to all such prior patents and prior knowledge would be very expensive to both parties.

The defendants contend that the plea is a proper one; that it was not necessary for the plea to be supported by an answer, even under the old equity practice; that under the equity rules prescribed by the Supreme Court of the United States no plea is to
20 be accompanied by an answer except where fraud or combination is alleged in the bill; and that even if the plea be defective in form or substance, or if it should have been supported by an answer, the plaintiff has mistaken his remedy.

No authority is cited where a plea like the present one has been put in or allowed in a suit for the infringement of a patent. By equity rule 34, if a plea is overruled, either on an issue of law or an

issue of fact in regard to it, the defendant has an absolute right to put in an answer to the bill, or to so much thereof as is covered by the plea. By equity rule 39 a defendant has a right in all cases to insist by answer upon all matters of defence (not being matters of abatement or to the character of the parties or matters of form), in bar of or to the merits of the bill of
which he may be entitled to avail himself by a plea in
21 bar. If the present plea should be tried on the fact of infringement, and the issue be found for the plaintiff, and the plea be thus overruled, it would seem difficult, under the above rules, to exclude the defendant from contesting again, under an answer, the question of infringement, especially as, under the issues raised by an answer, and under the light thrown on the subject by the proofs on the issue on the plea, and under new proofs on the issues on the answer, the question of infringement might be presented in a very different light from that in which it was presented on the trial of the issue on the plea, and in one much more favorable to the defendants. Indeed, the defendants' affidavit on this motion states that they will desire, by answer, to put in prior patents; to
limit the scope of the plaintiff's patent, so as to render in-
22 fringement impossible. It is difficult to see how they are to be prevented from doing this by answer, after the overruling of their plea. The question of the infringement of a patent depends very much on the construction of its claims, and that depends very much on prior patents on the same subject. If such prior patents are to be put in they ought to be set up in an answer and be put in once for all, and the issue of infringement ought to be tried but once, and under an answer, and not under a plea. The defendants think they will succeed on the question of infringement; but the plaintiff thinks otherwise. If the defendants succeed expense will have been saved by having no other issue but that on the plea. But if the plaintiff succeeds on the plea, he must, to realize his success, go through a second litigation on the same question, and
23 no expense will have been saved. The one result is now to be contemplated quite as much as the other. Within the principles laid down in Rhode Island *vs.* Massachusetts (14 Peters, 210), it would be unjust to the plaintiff to permit the issue of infringement to be determined on the plea.

Besides this, none of the adjudged cases sanction, in a suit like this, a plea merely of non-infringement under rules of practice such as those which govern this case. On the contrary, the authorities condemn such a plea. (Bailey *v.* LeRoy, Ch. R, 514; Black *v.* Black, 15 Georgia, 445; Milligan *v.* Milledge, 3 Cranch, 220.)

It is only when a plea is unexceptionable in its form and character that it is to be set down for argument or to be replied to. (Rhode Island *v.* Massachusetts, 14 Peters, 210, 257.)

The motion to strike this plea from the files as improper is a
correct motion, and must be granted, with leave to the de-
24 fend[ant] to answer in 30 days, on payment of costs.

Briesen & Betts, for the plaintiff; W. H. L. Lee, for the defendants.

(Endorsed:) Circuit court of the United States for the southern district of New York. James L. Sharp *vs.* Christopher Reissner and others. Decision Oct. 5, 1881. U. S. circuit court. Filed Oct. 5, 1881. Joseph M. Deuel, clerk.

25 United States Circuit Court, Southern District of New York.
In Equity.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER, ADAM RIESSNER, and CHARLES E. MEIER,
Doing Business as C. Riessner & Company.

Please take notice that the order, of which a copy is herewith served upon you, will be presented to his honor, Judge Blatchford, for settlement on October 7th, 1881, at 11 a. m., or as soon thereafter as counsel can be heard, at the circuit court rooms in the United States court-house and post-office building, in the city of New York.

Very respectfully,
(S'g'd) BRIESEN & BETTS,
Compl't's Sol'rs.

To Messrs. Turner, Lee & McClure, def't's sol'rs.
Dated New York, October 6, 1881.

26 United States Circuit Court, Southern District of New York.
In Equity.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER, ADAM RIESSNER, and CHARLES E. MEIER,
Doing Business as C. Riessner & Company.

A motion, made on behalf of complainant herein, that the plea filed on the part of defendants in this case should be stricken from the files of this court or else be ordered to stand as an answer in the case on the part of defendants, coming on to be heard upon said plea, and upon the affidavit of Samuel R. Betts, verified July 9, 1881, and upon the affidavit of Charles E. Meier, verified September 14, 1881, after hearing A. V. Briesen, Esq., counsel for com-
27 plainant, and W. H. L. Lee, Esq., counsel for defendants, and due deliberation had, now, on motion of Briesen & Betts, complainant's solicitors, it is ordered, adjudged, and decreed that the plea filed on the part of defendants in this case be stricken from the files of this court, and that the defendants have thirty days from the date of filing of this order to file their answer herein upon payment, within said thirty days, to complainant, of his costs of said motion, to be taxed.

(S'g'd) SAM'L BLATCHFORD.

(Endorsed:) U. S. circuit court, so. dist. of N. Y. James L. Sharp *vs.* C. Riessner *et al.* Notice & proposed order of settlement. Briesen & Betts, compl't's sol'rs, 229 B'dway, N. Y.

28 Service of within notice and order of settlement admitted this 6th day of October, 1881.

(S'g'd) TURNER, LEE & McCLURE,
Def'ts' Sol'rs.

[Endorsed:] U. S. circuit court. Filed Oct. 8, 1881. Joseph M. Deuel, clerk.

29 U. S. Circuit Court, Southern District of New York.

JAMES L. SHARP, Complainant,
vs.
CHRISTOPH RIESSNER and CHARLES E. MEIER, Impleaded with Another, Defendants.

The answer of the defendants, Christoph Riessner and Charles E. Meier, to the bill of complaint of James L. Sharp, or to so much and such parts thereof as they are advised that it is material for them to make answer unto, answering, say, upon information and belief:

I. These defendants reserve to themselves the benefit of all and every advantage of exception to the manifold uncertainties and insufficiencies in the said bill of complaint contained.

II. These defendants are informed and believe that letters patent of the United States, bearing date the 16th day of May, 1876, were issued to Abner B. Hutchins for an alleged invention of "a new and improved hydrocarbon stove;" but these defendants deny that the said Abner B. Hutchins was the original and
30 first inventor of the said alleged improvement described in said letters patent, and deny that said alleged invention had not been known and used before said Hutchins' said alleged invention, and deny that the same was not for more than two years before his alleged application for a patent in public use or on sale with his consent or allowance; and these defendants are not informed whether in other respects the requirements of law relative to the granting of letters patent were complied with by the said Hutchins, or what, if any, proceedings were had prior to the issue of said letters patent, or whether said letters patent were issued in due course of law, and therefore deny the same, and leave the plaintiff to make such proof thereof as he may be advised; and these defendants deny that the said letters patent granted or secured to said Hutchins any exclusive rights or privileges whatever, or that the said Hutchins became or at any time was the sole owner of any rights and privileges whatsoever by virtue of said letters patent.

III. These defendants are not informed, save by said bill of complaint, whether the said Abner B. Hutchins, on or about the 18th day of April, 1881, or at any time by assignment in writing sold, assigned, and transferred unto the complainant all his, said Hutchins', right, title, and interest in and to said invention and letters patent therefor, and in and to all claims for damages and profits incurred by past infringements of said letters patent and all his right to sue for and recover such damages and profits, or as to

whether said alleged assignment was duly recorded in the Patent Office of the United States, and therefore deny said allegation, and leave the plaintiff to make such proof thereof as he may be advised.

IV. And these defendants deny that by virtue of the facts set forth in the complainant's bill or any of them the said complainant became the owner of any invention or improvement whatever and of any rights or privileges whatsoever.

31

V. And these defendants are not informed, save by said bill, as to whether the complainant has invested and expended large or any sums of money, or as to whether he has been to great or any trouble in and about said alleged invention, and for the purpose of carrying on the business of manufacturing and selling hydrocarbon stoves and making the same profitable to himself and useful to the public, and therefore they deny the same, and leave the plaintiff to make such proof thereof as he may be advised.

VI. And these defendants deny that said invention has been or is of any benefit and advantage whatsoever, and deny that large or any quantities of hydrocarbon stoves were made according to said invention and sold by complainant; and deny that the public have generally acknowledged and acquiesced in the alleged rights of the complainant; and deny that the complainant will realize and receive any gains or profits therefrom if alleged infringement thereof by defendants or any other persons shall be prevented.

VII. And these defendants deny that, after the issuing of said alleged letters patents and before the commencement of this suit, they ever, at the city of New York or elsewhere, made, constructed, used, or vended to others to be used the said invention, or did make, construct, use, and vend to others to be used hydrocarbon stoves made according to or employing or containing such invention, and that said defendants or their confederates continue so to do, or that they ever threatened or are threatening to make the aforesaid hydrocarbon stoves in large or any quantities, or to supply the market therewith, or to sell the same in defiance of any rights acquired by or secured to complainant or otherwise; and deny that the complainant has suffered great or any loss or injury, or that the complainant has been or still is being deprived of great or any gains which he might or otherwise would have obtained, or that these defendants have received and enjoyed, or are receiving and enjoying, any gains and profits whatsoever by reason of any of said alleged unlawful acts and doings.

32

VIII. And these defendants deny that they have made or sold, or caused to be made or sold, any hydrocarbon stove or stoves in any manner involving or embracing the alleged invention described and claimed in said letters patents, or that they have any such stoves on hand, or that they are offering any such stoves for sale, or that they have made and realized large or any profits and advantages therefrom, or that any acts of these defendants have the effect to or that they do encourage and induce others to infringe said letters patent, in disregard of any of the complainant's alleged rights.

IX. And these defendants deny that they have refused to desist from any infringement of complainant's said letters patent, and that

they continue to make and sell hydrocarbon stoves in violation of the complainant's alleged rights.

X. And in answer to the whole and each and every part of the interrogatory contained in the complainant's said bill these defendants state that they have never made and sold before or since May 16, 1876, any hydrocarbon stove or stoves such as are herein referred to, and that they have none on hand.

These defendants further state, on information and belief, that, in view of the state of the art as it existed at the time of the alleged invention of said Hutchins, the same did not cover any new and useful art, machine, manufacture, or composition of mat-
33 ter, or any new and useful improvement in any art, machine, manufacture, or composition of matter, and that the subject-matter embraced in each of the clauses of claim of the said letters patent is not such as can lawfully be the subject of letters patent.

These defendants further allege, on information and belief, the following special matters, and give notice that in the proof for final hearing of this cause they will prove the same.

First. That for the purpose of deceiving the public the description and specification filed by said patentee in the Patent Office was made to contain less than the whole truth relative to his alleged invention or discovery, and more than is necessary to produce the desired effect; and,

Second. That the said patentee had surreptitiously and unjustly obtained said letters patent for that which was, in fact, invented by another who was using reasonable diligence in adopting and perfecting the same; and,

Third. That the said alleged invention of said Hutchins had been patented and described in printed publications prior to his supposed invention or discovery thereof; and,

Fourth. That said Hutchins was not the original and first inventor and discoverer of any material or substantial part of the thing patented; and,

Fifth. That the said alleged invention of Hutchins had been in public use and on sale in this country for more than two years before his application for said patent, both with and without his consent and allowance, and that said invention had been abandoned to the public.

The following list contains the names of the patentees and the dates of their patents, and when granted and the titles of the
34 printed publication in which the thing patented had been patented or described prior to the supposed invention or discovery thereof by said Hutchins:

Letters patent of Great Britain granted to Jules Castel and Frederic Maurichéau Beaupré, dated February 2, 1855, and numbered 251, for an improved "burner for lamps."

Letters patent of Great Britain granted to E. T. Hughes June 16, 1859, and numbered 1441 for an improved night lamp clock.

Letters patent of Great Britain granted to Samuel Clarke December 11, 1855, and numbered 2803, for improvements in lanterns for affording light and for cooking.

Letters patent of Great Britain, dated March 25, 1840, enrolled September 25, 1840, and granted to Henry Smith for improvements in gas burners and lamps.

Letters patent of Great Britain, dated December 9, 1837, enrolled June 9, 1838, and granted to Jeremiah Bynner for improvements on lamps.

Letters patent of Great Britain granted to Jules Le Bréton June 5, 1856, and numbered 1340, for an improvement in oil lamps for lighting and heating.

Letters patent of Great Britain granted to Marc Antoine F. Mennons November 14, 1859, and numbered 2574, for an improved apparatus for the concentration, distribution, and application of the heat evolved by gas, oil, and other lamps.

Letters patent of Great Britain granted to C. R. Wessel and F. X. Kukla June 3, 1856, and numbered 1316, for a vaporless glow heat disseminator.

Letters patent of Great Britain granted to George Roberts August 15, 1842, and numbered 9446, for an improvement in the construction of lamps.

Letters patent of Great Britain granted to William Young May 28, 1842, and numbered 9368, for improvements in lamps and candlesticks.

35 Letters patent of Great Britain granted to William Young December 14, 1843, and numbered 9989, for an improvement in the manufacture of lamps and gas-burners.

Letters patent of Great Britain granted to G. F. Wilson and C. Humphrey December 28, 1848, and numbered 12390, for a lamp for burning oleic acid.

Letters patent of Great Britain granted to Charles Orphin and Edward Lyons July 2, 1857, and numbered 1845, for improvements in table and other lamps.

Letters patent of Great Britain granted to J. S. Nibbs and J. Hinks March 6, 1858, and numbered 451; for an improvement in oil and spirit lamps.

Letters patent of Great Britain granted to James Young March 11, 1858, and numbered 489, for improvements in lamps.

Letters patent of Great Britain granted to William Young March 9, 1854, and numbered 567, for improvements in lamps.

Letters patent of the United States granted to William Howe December 31, 1812, for an improved nurse lamp.

Letters patent of the United States granted to Nathaniel Waterman December 25, 1849, and numbered 6978, for improvements in portable lanterns.

Letters patent of the United States granted to R. S. Andrews May 12, 1857, and numbered 17251, for an improved apparatus for heating and cooking by gas.

Letters patent of the United States granted to —. A. Mayer July 11, 1854, and numbered 11259, for an improvement in gas stoves.

Letters patent of the United States granted to William J. Demorest, assignee of Samuel Whitmarsh, August 15, 1856, and numbered 15547, for an improved vapor-burning lamp.

36 Letters patent of the United States granted to Thomas G. Clinton November 25, 1856, and numbered 16112, for an improved alcohol stove.

Letters patent of the United States granted to Edward F. Jones May 4, 1858, and numbered 20159, for an improved coal-oil lamp; reissued January 11, 1859, the reissue being numbered 648.

Letters patent of the United States granted to James Y. Humphrey July 17, 1860, and numbered 29172, for an improved mica and tin chimney.

Letters patent of the United States granted to William F. George August 21, 1860, and numbered 29687, for an improvement in stoves.

Letters patent of the United States granted to E. Conway August 28, 1860, and numbered 29769, for an improved heating and cooking apparatus.

Letters patent of the United States granted to W. Fulton February 4, 1862, and numbered 34297, for an improved cooking apparatus.

Letters patent of the United States granted to J. H. Irwin May 6, 1862, and numbered 35158, for an improvement in lamps.

Letters patent of the United States granted to W. Fulton August 3, 1858, and numbered 21069, for an improvement in lamps.

Letters patent of the United States granted to Conrad Gersten January 25, 1859, and numbered 22723, for an improvement in lanterns.

Letters patent of the United States granted to J. W. Lefferts June 16, 1857, and numbered 17578, for a foot-warmer.

Letters patent of the United States granted to J. L. Drake September 20, 1859, and numbered 25493, for a lamp-burner.

Letters patent of the United States granted to R. Jenkins January 25, 1859, and numbered 22729, for a lamp-burner.

Letters patent of the United States granted to J. E. Ambrose October 16, 1860, and numbered 30381, for a lamp.

37 Letters patent of the United States granted to W. W. Wade June 29, 1858, and numbered 20748, for a lamp-burner.

Letters patent of the United States granted to J. Hall and J. S. Atterbury March 19, 1861, and numbered 31714, for a lantern.

Letters patent of the United States granted to R. C. Overton November 7, 1848, and numbered 5912, for lamp burner.

Letters patent of the United States granted to T. Watters July 7, 1857, and numbered 17771, for a gas stove.

Letters patent of the United States granted to E. J. Hale June 22d, 1858, and numbered 20641, for a camphene lamp.

Letters patent of the United States granted to P. Dorsch July 27, 1858, and numbered 21046, for a stove for burning soft coal.

Letters patent of the United States granted to E. A. Leland March 20, 1860, and numbered 27595, for an improvement in gas stoves.

Letters patent of the United States granted to J. and W. Toothill December 10, 1861, and numbered 33909, for an improvement in portable cooking apparatus.

Letters patent of the United States granted to Max Miller August

17, 1858, and numbered 21209, for an improved lantern for burning coal oil.

Letters patent of the United States granted to R. Thomas May 4, 1858, and numbered 20178, for an improved lamp attachment for preventing smoke, &c.

Letters patent of the United States granted to M. A. Dietz March 8, 1859, and numbered 23160, for an improvement in lamps.

Letters patent of the United States granted to M. A. Dietz May 3, 1859, and numbered 23832, for an improvement in lamps.

Letters patent of the United States granted to W. Howard June 3, 1862, and numbered 35447, for an improvement in coal-oil lamp chimneys.

38 Letters patent of the United States granted to J. Mulvaney November 26, 1861, and numbered 33791, for an improvement in lamps.

Letters patent of the United States granted to E. Tritten January 29, 1861, and numbered 31271, for an improvement in lamps.

Letters patent of the United States granted to J. Stuber and F. Frank April 23, 1861, and numbered 32155, for an improvement in lamps.

Letters patent of the United States granted to D. Hughes December 17, 1861, and numbered 33945, for an improvement in lamps.

Letters patent of the United States granted to W. O. B. Merrill June 10, 1862, and numbered 35534, for an improved coal-oil lamp for railway cars.

Letters patent of the United States granted to W. O. B. Merrill June 10, 1862, and numbered 35535, for an improved lamp chimney.

Letters patent of the United States granted to H. J. Smith and W. Jones May 6, 1862, and numbered 35184, for an apparatus for testing coal oils.

Letters patent of the United States granted to Edward V. Dickie February 4, 1862, and numbered 34293, for an improved lamp chimney.

Letters patent of the United States granted to Samuel T. McDougall July 1, 1862, and numbered 35769.

Letters patent of the United States granted to Eliza J. Caldwell August 15, 1865, and numbered 49469.

Letters patent of the United States granted to Freeman Winslow November 7, 1865, and numbered 50866.

Two letters patent of the United States granted to O. F. Merrill, each dated May 22, 1866, and numbered 55032 and 55033.

Letters patent of the United States granted to Charles H. Reichman January 31, 1865, and numbered 46141.

39 Letters patent of the United States granted to William B. Billings January 17, 1865, and numbered 45,957.

Letters patent of the United States granted to Robert B. Mitchell October 26, 1869, and numbered 96249.

Letters patent of the United States granted to J. Edgecombe September 20, 1864, and numbered 44294.

Letters patent of the United States granted to J. B. Greene September 30, 1862, and numbered 36584.

Letters patent of the United States granted to C. S. Bounce September 13, 1864, and numbered 44252.

Letters patent of the United States granted to James Ives October 25, 1864, and numbered 44803.

Letters patent of the United States granted to A. Taplin October 14, 1862 and numbered 36680.

Letters patent of the United States granted to W. L. Fish June 17, 1862, and numbered 35598.

Reissued letters patent of the United States granted to W. L. Fish December 23, 1862, and numbered 1368.

Reissued letters patent of the United States granted to W. L. Fish January 5, 1864, and numbered 1596.

Letters patent of the United States granted to W. L. Fish April 18, 1876, and numbered 7,069.

Letters patent of the United States granted to M. Waterman July 18, 1848, and numbered 5675.

Letters patent of the United States granted to J. A. Frey December 18, 1866, and numbered 60499.

Reissued letters patent of the United States granted to E. F. Jones January 11, 1859, and numbered 648.

Letters patent of the United States granted to W. Brown March 25, 1862, and numbered 34733.

Letters patent of the United States granted to Willard T. Eddy February 9, 1864, and numbered 41496.

40 Letters patent of the United States granted to A. Bliss December 23, 1862, and numbered 37212.

Letters patent of the United States granted to Willard T. Eddy April 7, 1863, and numbered 38102.

Letters patent of the United States granted to H. W. Hayden April 14, 1863, and numbered 38162.

Letters patent of the United States granted to M. L. Callender April 23, 1863, and numbered 38284.

Letters patent of the United States granted to William B. Billings October 11, 1864, and numbered 44592.

Letters patent of the United States granted to G. Y. Custer August 19, 1862, and numbered 36206.

Reissued letters patent of the United States granted to C. Gersten September 17, 1867, and numbered 2765.

Letters patent of the United States granted to J. E. Ambrose January 21, 1865, and numbered 46045.

Letters patent of the United States granted to E. McKinney October 16, 1866, and numbered 58862.

Letters patent of the United States granted to C. A. Harper November 20, 1866, and numbered 59766.

Letters patent of the United States granted to F. H. Brown January 1, 1867, and numbered 60680.

Letters patent of the United States granted to A. T. Boon March 19, 1867, and numbered 63004.

Letters patent of the United States granted to J. Lee April 2, 1867, and numbered 63400.

Letters patent of the United States granted to D. L. Emerson March 10, 1868, and numbered 75400.

41 Letters patent of the United States granted to H. Y. Lazear May 7, 1867, and numbered 64544.

Letters patent of the United States granted to T. J. Kelly November 14, 1865, and numbered 50938.

Letters patent of the United States granted to J. S. Hull February 2, 1864, and numbered 41434.

Letters patent of the United States granted to W. A. Hancock March 7, 1865, and numbered 46665.

Letters patent of the United States granted to A. Eckert March 7, 1865, and numbered 46649.

Letters patent of the United States granted to William B. Billings October 18, 1864, and numbered 44700.

Letters patent of the United States granted to J. Calkins January 3, 1860, and numbered 26649.

Letters patent of the United States granted to C. Britain January 19, 1864, and numbered 41274.

Letters patent of the United States granted to C. W. Cahoon February 19, 1861, and numbered 31511.

Letters patent of the United States granted to C. A. Harper May 1, 1866, and numbered 54337.

Letters patent of the United States granted to L. A. Plumb January 22, 1867, and number 61454.

Letters patent of the United States granted to John Bowles February 7, 1871, and numbered 111,512.

Letters patent of the United States granted to James H. Thorpe November 24, 1870, and numbered 103,526.

Letters patent of the United States granted to William L. Gibson February 10, 1874, and numbered 147,386.

Letters patent of the United States granted to James H. Thorpe July 16, 1872, and numbered 129,436.

42 Reissued letters patent of the United States granted to James H. Thorpe May 20, 1873, and numbered 5,418.

Letters patent of the United States granted to Franz Janke February 18, 1873, and numbered 136,063.

Letters patent of the United States granted to Samuel Cooper June 18, 1872, and numbered 128,022.

Letters patent of the United States granted to Thomas S. Speakman April 4, 1865, and numbered 47173.

Letters patent of the United States granted to John Allen September 26, 1865, and numbered 50087.

Four letters patent of the United States granted to John A. Frey, respectively, January 28, 1868, and numbered 73710; May 21, 1867, and numbered 64965; August 22, 1871, and numbered 118,358; October 20, 1874, and numbered 156,149.

Letters patent of the United States granted to S. Hunt July 22, 1862, and numbered 35936.

Letters patent of the United States granted to J. H. Murphy May 24, 1864, and numbered 42864.

Letters patent of the United States granted to G. L. Witsil March 22, 1864, and numbered 42059.

Letters patent of the United States granted to H. Alen August 17, 1875, and numbered 166,740.

Letters patent of the United States granted to A. Q. Allis August 17, 1875, and numbered 166,738.

Letters patent of the United States granted to F. Gates August 31, 1875, and numbered 167,236.

Letters patent of the United States granted to F. Gates August 31, 1875, and numbered 167,237.

Letters patent of the United States granted to E. R. Blood February 1, 1876, and numbered 173,101.

And the following list contains the names and residences of the persons who invented or who had prior knowledge of the thing
43 patented before the alleged invention thereof by the said Hutchins, and where and by whom it had been used:

Edward F. Rogers, of Boston, Massachusetts, at said Boston and other places.

Wm. Howe, of Boston, Massachusetts, at said Boston and other places.

Nathaniel Waterman, of Boston, Massachusetts, at said Boston and other places.

S. Whitemarsh, of Northampton, Massachusetts, at said Northampton and other places.

W. F. George, of Cincinnati, Ohio, at said Cincinnati and other places.

Edward F. Jones, of Boston, Massachusetts, at said Boston and other places.

James Y. Humphrey, of Philadelphia, Penn., at said Philadelphia and other places.

George Benson, Jr., of New York, New York, at said New York and other places.

John Krummenauer, of New York, New York, at said New York and other places.

Robert E. Dietz, of New York, New York, at said New York and other places.

William Fulton, of Elizabeth, New Jersey, at said Elizabeth and other places.

William F. Shaw, of Boston, Massachusetts, at said Boston and other places.

Alford Star, of New York, New York, at said New York and other places.

Charles H. Reichmann, of New York, New York, at said New York and other places.

Charles Krummenauer and August Kaestner, both of New York, New York, at said New York and other places.

George Chappel, M. A. Dietz and D. Morris, all of Brooklyn, New York, at said Brooklyn and other places.

Charles Howson, Henry Howson, Horace J. Smith, and Woodruff Jones, all of Philadelphia, Pennsylvania, at said Philadelphia and other places.

44 Patrick Mihan, of Boston, Massachusetts, at said Boston and other places.

F. S. Robinson, of Boston, Massachusetts, at said Boston and other places.

Simeon Taylor, of Cambridgeport, Massachusects, at Boston, Massachusetts, and other places.

Charles M. Drennan, of West Somerville, Massachusetts, at Boston, Massachusetts, and other places.

John M. Stimpson, of Boston, Massachusetts, at said Boston and other places.

E. R. Tarbell, of Boston, Massachusetts, at said Boston and other places.

D. B. Morey, of Malden, Massachusetts, at said Malden and other places.

John A. Frey, of New York, New York, at said New York and other places.

Gustav Hartig, of Washington, District of Columbia, at said Washington and other places.

B. W. Spence, of West Roxbury, Massachusetts, at Boston, Massachusetts, and other places.

Max Miller, of Brooklyn, New York, at said Brooklyn and other places.

Conrad Gersten, of Brooklyn, New York, at said Brooklyn and other places.

Egbert F. W. Macready, of Boston, Massachusetts, at said Boston and other places.

John T. Ripley, of East Braintree, Massachusetts, at Boston, Massachusetts, and other places.

Edwin A. Leland, of Brooklyn, New York, at Washington, District of Columbia, and New York, N. Y., and other places.

Samuel T. McDougall, of Brooklyn, New York, at New York, N. Y., and other places.

Phineas Smith, of New York, New York, at said New York and other places.

Henry D. Blake, of New York, New York, at said New York and other places.

Thomas G. Clinton, of Washington, District of Columbia, at said Washington and other places.

45 William J. Demorest, of New York, New York, at said New York and other places.

Henry Pennie, of Brooklyn, New York, at said New York and other places.

Alanson H. Tifft, of the city of Brooklyn, at said city of Brooklyn, and at the city of New York.

R. H. Howard, of the city of New York, at said city of New York.

John A. Frey, of New York, New York, at said New York, at Washington, D. C., and at other places.

Christoph Riessner, of said New York, at said city of New York, and at Washington, D. C.

Adam Riessner, at said city of New York and at Washington, D. C.

John Bowles, of Augusta, Georgia, at said Augusta and at Washington, D. C., and at other places.

James H. Thorpe, of the city af New York, at said city of New York.

Freeman Winslow, of Marblehead, Massachusetts, at said Marblehead.

William L. Gibson, of Elmira, New York, at said Elmira.

Samuel Cooper, of Washington, D. C., at said Washington.

Joshua E. Ambrose, of Lena, Illinois, at said Lena.

John Russell, of Troy, New York, at said Troy.

Thomas S. Speakman, of Camden, New Jersey, at said Camden.

John Allen, of Washington, D. C., at said Washington, and at the city of New York.

James L. Sharp, of and at the city of New York.

William B. Billings, formerly of the city of New York, present residence unknown, at said city of New York, at Pittsburgh, Pennsylvania, and at other places.

Warren L. Fish, of Newark, New Jersey, at said Newark, and at the city of New York, and at other places.

46 And divers other persons, whose names and residences, and the places where they respectively had known and used the same, are at present unknown to these defendants, but which these defendants pray to be allowed to set up in their answer as soon as they ascertain the same; all of which use and knowledge was prior to the pretended invention of said Hutchins.

And these defendants allege that the patentee has claimed as new in said letters patent more than he had a right to claim, and more than that of which he was the original and first inventor or discoverer, and that said complainant had full knowledge of said facts long before the filing of his bill of complaint herein, and that the plaintiff should have filed his disclaimer to the part or or parts of the thing or things patented in the said letters patent, of which he was not the original or first inventor or discoverer, and that he has unreasonably neglected and delayed to file said disclaimer, and therefore said letters patent are void, and the plaintiff is not entitled to the relief prayed for in the bill nor to recover of these defendants any profits or damages for the infringement of said letters patent or costs of suit thereupon; and these defendants claim the benefit thereof, as if the same had been specially pleaded to the bill of complaint.

These defendants, further answering, deny all allegations of unlawful acts in the said bill of complaint contained and charged against them, and without this, that any other matter or thing in the said bill contained material or necessary to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants; all of which these defendants are willing to aver, maintain, and prove as this honorable court may direct,

47 and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

CHRISTOPH RIESSNER.
CHARLES E. MEIER,
Per CHRISTOPH RIESSNER.
CHARLES E. MEIER.

TURNER, LEE & McCLURE,
Solicitors for Defendants, Christoph Reissner and Chas. E. Meier.
W. H. L. LEE, *Of Counsel.*

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

On this 16th day of November, 1881, before me personally came Christoph Riessner, one of the defendants named in the foregoing answer, and who has signed the same, and he, being by me duly sworn, did depose and say that he has read the said answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

[L. S.] JAMES F. HORAN,
Notary Public, No. 105, *New York County.*

48 *Stipulation.*

U. S. Circuit Court, Southern District of New York.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER and CHARLES E. MEIER, Impleaded with Ano.

It is hereby stipulated and agreed that the defendants, Christoph Riessner and Charles E. Meier, may amend their answer herein by adding to the list of prior patents set up as anticipations, in whole or in part, of the plaintiff's patent, upon which suit is brought, the following words:

"Letters patent of the United States granted to William B. Billings, dated November 14, 1865, numbered 50087.

"Canadian letters patent, granted to James Henry Thorp, dated May 15, 1873, number 2366. (John Augustus Frey, inventor.)"

January 17, 1882.

BRIESEN & BETTS,
Solicitors for Complainant.

U. S. Circuit Court, Southern District of New York.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER and CHARLES E. MEIER, Impleaded with Others.

49 And now come the defendants, Christoph Riessner and Charles E. Meier, into court, by Turner, Lee & McClure, their attorneys, and amend their answer herein by adding to the

list of prior patents set up as anticipations, in whole or in part, of the plaintiff's patent, upon which suit is brought, the following words:

"Letters patent of the United States granted to William B. Billings, dated November 14, 1865, number 50087.

"Canadian letters patent granted to James Henry Thorp, dated May 15, 1873, number 2366. (John Augustus Frey, inventor.)"

CHR. RIESSNER.
CHAS. E. MEIER.

TURNER, LEE & McCLURE,
Solicitors for C. Riessner and Meier.

STATE OF NEW YORK, }
City and County of New York, } ss:

On this 20th day of January, 1882, before me personally appeared Christoph Riessner and Charles E. Meier, who signed the foregoing amendments to answer, who, being by me severally duly sworn, did depose and say, each for himself, that he is one of the defendants herein; that he has read the foregoing amended answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

[L. S.] JAMES F. HORAN,
Notary Public., N. Y. Co.

50 Circuit Court of the United States for the Southern District of New York. In Equity.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER, ADAM RIESSNER, and CHARLES E. MEIER, Doing Business as C. Riessner & Co.

The replication of James L. Sharp, complainant, to the answer of Christoph Riessner and Charles E. Meier, two of the above-named defendants.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will
51 aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant—

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to

aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

BRIESEN & BETTS,
Solicitors for Complainant.

52 (Endorsed:) United States circuit court, southern district of New York. In equity. James L. Sharp *vs.* Christoph Riessner *et al.* Replication. Briesen & Betts, solicitors for complainant, No. 229 Broadway, New York, N. Y. U. S. circuit court. Filed Dec. 1st, 1881. Joseph M. Deuel, clerk.

53 COMPLAINANT'S EXHIBIT ASSIGNMENT. J. A. S., Ex'r. December 7, 1881.

SHARP *v.* RIESSNER and Others.

Whereas Abner B. Hutchins, of Brooklyn, Kings county,
54 in the State of New York, did obtain letters patent of the United States of America for certain improvements in hydrocarbon stoves, which letters patent bear date the 16th day of May, eighteen hundred and seventy-six, and are numbered 177,334;

And whereas James L. Sharp, of New York, in the county and State of New York, is desirous of acquiring all the right in and to said letters patent, including the right to recover back damages and profits from infringers of said patent:

Now, this indenture witnesseth: That for and in consideration of the sum of one dollar to me, the said Abner B. Hutchins, in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and do hereby assign, sell, and set over, unto the said James L. Sharp all the right, title, and interest which I have in the said invention, as secured to me by said letters patent, including all my right to sue for and collect damages and profits occasioned by infringements of said letters patent at any time since the 16th day of May, 1876, the same to be held and enjoyed by the said James L. Sharp for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are granted, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

In testimony whereof I have hereunto set my hand and affixed my seal this eighteenth day of April, eighteen hundred and eighty-one.

ABNER B. HUTCHINS. [L. S.]

Sealed and delivered in presence of—
JAMES D. LUTHER.

Received for record April 22, 1881, and recorded in Liber M 26, page 116, of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] V. D. STOCKBRIDGE,
Acting Commissioner.

Ex'd: F. C. T.

55 COMPLAINANT'S EXHIBIT LEE'S THREATENING LETTER. J. A. S., Ex'r. January 5, 1882.

SHARP *v.* RIESSNER.

Herbert B. Turner, B. F. Lee, David McClure, Wm. H. L. Lee.

Law offices of Turner, Lee, & McClure (late Turner, Kirkland & McClure, and Lee & Alvord) 20 Nassau street, N. Y. Entrance, room 17.

NEW YORK, *April* 28, 1881.

Mr. James L. Sharp.

DEAR SIR: Messrs. C. Riessner & Co. have handed us a notice signed by your attorney, dated April 19, 1881, in relation to Hutchins' Patent, No. 177,334, dated May 16, 1876. So far as that notice is concerned, of course Messrs. C. Riessner & Co. care nothing about it. They are fully aware of the fact that you know that Hutchins' Patent, 177,334, has no relation whatever to the goods manufactured and put upon the market by them, and that if you undertake to bring any suit upon it, it will be easy to prove, to the satisfaction of any court or any jury, that such suit will have all the elements of a malicious prosecution, intended only to interfere with their trade.

We are instructed to give you fair warning that in case you commence any such suit against Messrs. C. Riessner & Co., or against any of their customers, or in case you state to any of their customers, or to the trade generally, either verbally, in writing, or in print, that the goods of said C. Riessner & Co. infringe patent No. 177,334, action will be promptly brought against you for damages; and we further beg leave to call your attention to the provisions of the Code of Civil Procedure which give a plaintiff redress for this class of injuries by order of arrest, both on mesne and final process.

Yours truly, TURNER, LEE & McCLURE.

56 Circuit Court of the United States for the Southern District of New York. In Equity.

JAMES L. SHARP, Complainant,

vs.

CHRISTOPH RIESSNER, ADAM RIESSNER, and CHARLES E. MEIER, Doing Business as C. Riessner & Co., Defendants.

Please take notice that we shall proceed to take proofs for final hearing on the part of the complainant under the 67th rule of the Supreme Court for courts of equity, as amended, and in accordance with the statutes in such cases made and provided, and in pursuance of the rules and practice of this court, before John A. Shields, Esq., an examiner of this court, under said statutes and rules, at our office, No. 229 Broadway, New York city, N. Y., on the 7th day of December, 1881, at 10 o'clock in the forenoon.

We desire the evidence to be adduced in this cause to be taken orally.

You are invited to attend and cross-examine the witnesses produced. The examination will be adjourned to such time and place as may be required without further notice.

Very respectfully, BRIESEN & BETTS,
Complainant's Solicitors.

To Messrs. Turner, Lee & McClure, solicitors for C. Riessner and C. E. Meier.

Dated New York city, December 3, 1881.

Rec'd copy of within Dec. 3, '81.
TURNER, LEE & McCLURE,
Sol'rs for C. Riessner and C. E. Meier.

57 Circuit Court of the United States for the Southern District of New York.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER, ADAM RIESSNER, and CHARLES E. MEIER, Doing Business as C. Riessner & Co.

Testimony taken on the part of the complainant under and pursuant to the 67th rule of the Supreme Court of the United States, as amended, before John A. Shields, Esq., a standing examiner of said court.

NEW YORK, *December* 7, 1881.

Met pursuant to notice annexed.

Present: A. V. Briesen, Esq., of counsel for complainant, and James F. Horan, representing W. H. L. Lee, Esq., of counsel for defendants.

Counsel for complainant offers in evidence a copy, hereafter to be certified, of letters patent granted to A. B. Hutchins, May 16, 1876, No. 177,334, for improvement in hydrocarbon stoves, and the same is marked Complainant's Exhibit Patent, J. A. S., Ex'r, Dec'r 7th, 1881.

Also assignment, dated April 18, 1881, from A. B. Hutchins to J. L. Sharp of all the right in letters patent No. 177,334, with certificate of record attached thereto, and the same is marked Complainant's Exhibit Assignment, J. A. S., Ex'r, Dec. 7th, 1881.

58 Also a hydrocarbon stove, and the same is marked Complainant's Exhibit Riessner Stove, J. A. S., Ex'r, Dec'r 7, 1881.

Wm. H. L. Lee, Esq., now appears in behalf of defendants, Christoph Riessner and Mr. Meier, and waives proof of execution of Exhibit Assignment, and admits that Exhibit Riessner Stove is of defendants' make, and of the kind made and sold by them before this suit was commenced and since May 16, 1876.

Mr. JAMES L. SHARP, the complainant, being called on his own behalf, and being duly sworn, deposes and says:

Q. 1. Please state your name, age, residence, and occupation?

A. James L. Sharp; I am fifty-three years of age; I reside in New York city, and I am a manufacturer of gas and oil stoves.

Q. 2. Are you the plaintiff in this case?

A. Yes, sir.

Q. 3. Are you the owner of letters patent marked Complainant's Exhibit Letters Patent?

A. Yes, sir.

Q. 4. Do you understand what is described and claimed in said patent?

A. Yes, sir.

Q. 5. Please compare Complainant's Exhibit Riessner Stove with the invention described and claimed in Complainant's Exhibit Patent, more particularly with reference to the first claim thereof.

A. Practically it is identically the same; it has the water pan and perforated plate, the lower perforated plate resting on the water pan and supporting the heating chamber and the cone plate; the heating chamber is hinged to the lower plate that rests on the water pan; it has a top plate which has perforations and openings in the centre.

Q. 6. What is the effects of the openings which you say exist in the lower plate which supports the heating chamber of Exhibit Riessner Stove?

A. They admit air under the heating chamber.

59. Q. 7. What is the object of the perforated top plate of Exhibit Riessner Stove?

A. To admit air under the vessel when it is set on the top of the stove and for the escape of gases and to support the vessel.

Q. 8. What is the object of the water pan in Exhibit Riessner Stove?

A. The water is intended to keep the oil cool.

Q. 9. What is the object of the hot-air cylinder or heating chamber, as you have called it, in Exhibit Riessner Stove?

A. To create a draft, to assist combustion, and convey the heat to any vessel that may be set on the top plate.

Q. 10. Why is there a hinge between the heating chamber or hot-air cylinder and the lower supporting plate in Exhibit Riessner Stove?

A. To make it more convenient for lighting and extinguishing and trimming and putting the wicks in.

The further examination of this witness is adjourned to Saturday, December 10, 1881, at 11 a. m.

NEW YORK, *December* 10, 1881—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Adjourned to December 22, 1881, at 11 o'clock a. m.

60 SHARP *v.* RIESSNER.

NEW YORK, *December* 22, 1881—11 o'clock a. m.

Met pursuant to adjournment.

Present: A. V. Briesen, Esq., counsel for complainant, and James F. Horan, for Wm. H. L. Lee, Esq., of counsel for defendant.

Counsel for defendant sends word that he is unable to proceed to-day, because he is actually engaged on another examination which was begun yesterday, and asks for an adjournment.

Mr. Sharp, being present to be cross-examined, states that his time is very valuable, and that he is unwilling to come here much oftener, unless his examination is going to proceed.

Complainant's counsel says that he will again produce Mr. Sharp for cross-examination at 10 o'clock a. m. Friday, December 23, 1881, and that if the defendant's counsel is not then ready to cross-examine him witness will be asked to sign his deposition.

Adjourned accordingly.

61 NEW YORK, *December* 23, 1881—10 o'clock a. m.

Met pursuant to adjournment.

Present: A. V. Briesen, Esq., of counsel for complainant, and James F. Horan for Wm. H. L. Lee, Esq., of counsel for defendant.

Adjourned till 3 o'clock p. m. to-day, by order of the examiner, on application of defendant's counsel.

NEW YORK, *December* 23, 1881—3 o'clock p. m.

Met pursuant to adjournmet.

Present: Samuel R. Betts, Esq., of counsel for complainant, and B. F. Lee, Esq., of counsel for defendant.

The cross-examination of Mr. JAMES L. SHARP by B. F. LEE, Esq.:

Cross-Q. 11. How long have you been a manufacturer of gas and oil stoves?

A. About sixteen years, I think.

Cross-Q. 12. When did you begin the manufacture of gas stoves?

A. About twelve or thirteen years ago; I think somewhere along there; I don't remember the date now exactly; it can be found out.

Cross-Q. 13. When did you begin the manufacture of coal-oil stoves?

A. I can't give you the exact date, but I can if I could go to the store; I should judge it was somewhere about ten years ago, I think; I will not be positive without referring to my books, by which I can give the exact date.

62 Cross-Q. 14. Then you think that you commenced the manufacture of coal-oil stoves as early as 1871, do you?

A. Yes, sir; somewhere about that.

Cross-Q. 15. Were you ever engaged in the business of selling coal-oil stoves manufactured by others?

A. Not to any extent at all; I may have sold a very few of other make.

Cross-Q. 16. At what period of time did you sell these stoves made by others?

A. I have no recollection of that, but I think it was previous to my manufacturing stoves.

Cross-Q. 17. Who made the stoves that you so sold previous to your manufacturing?

A. It is so long ago I can't recollect now.

Cross-Q. 18. What was the trade name of the stoves?

A. One of them, I think, was called the Tom Thumb, and the other one—I had only a few of them—I don't know that they had any name particularly.

Cross-Q. 19. Did not the Tom Thumb contain a water bath above the oil holder?

(Objected to as not cross-examination.)

A. I don't recollect, it is so long ago, how the stove was constructed now.

Cross-Q. 20. Can you not state whether or not the Tom Thumb had a water bath?

(Objected to as immaterial and not cross-examination.)

A. There was water used about it somehow or other, but how I cannot tell now; I think it was on the top, but I will not be particular about that.

Cross-Q. 21. Did you not testify fully in respect to the construction of the Tom Thumb stove, and produce a specimen thereof for the purpose of proving a water bath above an oil holder in a kerosene-oil stove to be old in the suit of Reissner and others *versus* James L. Sharp, about one or two years ago?

(The same objection and as not the best evidence.)

63 A. I believe I did.

Cross-Q. 22. Where is that Tom Thumb stove that you so produced as an exhibit?

(The same objection.)

A. I don't know where it is; I have not laid my eyes on it since that suit, to my knowledge.

Cross-Q. 23. Did you not last see it in this room?

(Same objection and as immaterial.)

A. Not to my recollection, sir.

Cross-Q. 24. When you expressed the opinion that Exhibit Riessner Stove was constructed as described in the first claim of Hutchins' patent, No. 177,334, did you bear in mind the fact that you had sold the Tom Thumb stove as far back as about the year 1871, or did you so testify without reference to the Tom Thumb stove or any other prior structure, the existence of which was known to you?

(Same objection.)

A. I was comparing the stove that was before me with the patent without reference to any other stove.

Cross-Q. 25. Please describe the other stove, not made by yourself, that you sold before you commenced to manufacture, about the year 1871.

(Objected to as immaterial and not called out by the direct examination.)

A. That I could not do, because it is so long since I saw the stoves; I couldn't describe them.

Cross-Q. 26. Can you not now recall their trade name, or that of any of them?

(Same objection.)

64 A. Only the Tom Thumb. I don't know what the other one was. I think it was made by somebody in Courtland street; the name I can't recall; I can't recall the name; it wasn't Tifft. I——

Cross-Q. 27. Describe the oil stoves that you first commenced to manufacture and sold about the year 1871.

(Same objection.)

A. It was a small tin stove, something similar to the Billings' stove.

Cross-Q. 28. Did it have a water bath?

(Same objection.)

A. No, sir.

Cross-Q. 29. What was its trade name?

(Same objection.)

A. Victor.

Cross-Q. 30. Is that the stove for the sale of which you were sued under the Fish patent in or about the month of May, 1876?

(Same objection.)

A. I think it was, but I won't be positive.

Cross-Q. 31. Where does Abner B. Hutchins reside? Give the street and number, if you can.

(Same objection.)

A. He lives in Williamsburgh, I believe; the street and number I don't know anything about.

Cross-Q. 32. What is his business, and where is it carried on?

(Same objection.)

65 A. He is a tinsmith; he is not carrying on business; he is working for me now, and has been for about a year.

Cross-Q. 33. What was his business before he began to work for you, and where was it carried on?

(Same objection.)

A. He has been at his work at tinsmithing, and used to work for W. A. Hull & Brother, manufacturing oil stoves and lamps; previous to that I don't know where he worked.

Cross-Q. 34. Have you ever seen a structure precisely like the hydrocarbon stove shown in the drawings of the patent 177,334?

A. Yes, sir; as near as could be.

Cross-Q. 35. Was it a structure made by Hutchins under his patent; if not, by whom was it made?

A It was made by C. Riessner & Co.

Cross-Q. 36. In that structure, which you have sworn was precisely like the hydrocarbon stove shown in the drawings of the patent 177,334, as near as could be, please state of what metal the tubes or chimneys marked "I" in said drawing were made.

A. I couldn't state whether they were made of tin or sheet-iron—they can be made of either—or of brass; they can be made of any sheet metal.

Cross-Q. 37. You are sure, are you not, that the stove referred to in your last question and answer, and which you say was made by C. Riessner & Co., had these tubes or chimneys "I," shown in the drawings of said patent, and extending from the diaphragm marked "H" in said drawing to the top of the hot-air cylinder?

A. I believe the inside of the cylinder hasn't got any chimney.

Cross-Q. 38. In that structure, which you have sworn was precisely like the hydrocarbon stove shown in the drawings of the patent 177,334, as near as could be, please state of what metal the legs marked "*a*" was made.

(Objected to as immaterial.)

A. I don't know of what kind of metal these legs were made of, but think they were made of iron.

Cross-Q. 39. Will you swear positively that this structure,
66 which you say was made by C. Riessner & Co., and which you have sworn was precisely like the said patent drawings, as near as could be, had any legs at all?

(The same objection.)

A. The legs on a stove is immaterial; they can be used or not on a stove.

Cross-Q. 40. Question repeated, and the witness is requested to please state what the fact was.

A. There are no legs shown on the Riessner Exhibit Stove.

Cross-Q. 41. I have not asked you about the Riessner Exhibit Stove, but I have asked you only about a structure which you have sworn you have seen, which structure you say was precisely like what is shown in the drawings of said patent, as near as could be. With this explanation, please answer the last question.

A. On the stove made by C. Riessner & Co.—I don't see any legs on it, but the stove itself is practically the same as I described it first.

(All of the answer after the word "but" objected to as volunteered and as irresponsive.)

Cross-Q. 42. You do not mean me to understand, do you, that Exhibit Reissner Stove is the structure referred to in cross-Q. 34?

A. Yes, sir; I meant that same stove.

Cross-Q. 43. What do you understand by the meaning of the word "submerged?"

(Objected to as immaterial and entirely indefinite.)

A. Stuck under something—buried under something.

Cross-Q. 44. Then you mean to tell the court, do you, that Complainant's Exhibit Riessner Stove is a copy of the structure shown in the Hutchins patent, 177,334, and "that they are precisely alike," "as near as could be?"

A. In all practical utility, I do.

Cross-Q. 45. Please answer cross-Q. 34 without reference to
67 your opinions in respect to "practical utility." In other words, please give a direct, plain answer to cross-Q. 34, according to the facts as they exist.

(Objected to as already answered.)

A. I have seen one made by Riessner & Co.

Cross-Q. 46. Can you produce a specimen of such a stove, which shall be a model correctly embodying what is shown in the drawings of said patent, and if you can will you please do so?

(Objected to as immaterial.)

Adjourned to Saturday, December 24, 1881, at 11 o'clock a. m.

NEW YORK, *December* 24, 1881—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel for complainant and defendant as before.

Counsel for complainant now gives notice that on Friday, the 30th day of December, 1881, at 11 o'clock in the forenoon, at the United States circuit court rooms, in this city, before Hon. Samuel Blatchford, circuit judge, a motion will be made on the part of complainant, based upon the filed papers and the testimony already taken in this case, that that portion of the cross-examination of the witness, James L. Sharp, to which objection has been made on the record be stricken out on the grounds of objections there stated, and that the examiner's fees and the costs and charges of taking such testimony be ordered to be paid by the defendants herein; and for such other relief as may be proper.

Adjourned to January 4, 1882, at 11 a. m.

68 NEW YORK, *January 4th*, 1881—11 o'clock a. m.

Met pursuant to adjournment.

Present: A. V. Briesen, Esq., of counsel for compl't, and Wm. H. L. Lee, Esq., of counsel for def't.

The cross-examination of Mr. SHARP continued by WM. H. L. LEE, Esq.:

The witness answers cross-Q. 46, viz:

A. I can't show any better than that exhibit there.

The witness points to Exhibit Riessner Stove.

Cross-Q. 47. If you were called upon to make a model of the structure shown in the drawings of letters patent No. 177,334, and described in the specification of said patent, would you consider that the Exhibit Riessner Stove was an exact model thereof?

(Question objected to as not limited to the subject-matter of the first claim, which is the only claim in issue, and counsel for complainant desires the witness to understand that the second claim of Complainant's Exhibit Patent is not in issue and was not referred to in his direct examination, and that all questions relating to the second claim or embracing it are objected to as not cross-examination.)

A. As far as the first claim of this patent goes I should.

Cross-Q. 48. I am not asking you about the first claim; the question refers to the drawings and the descriptive specification, exclusive of the claims; with this explanation I repeat the last question and request an answer to the same.

(The same objection.)

A. I should, as near as could be got.

Cross-Q. 49. Were you ever sued by Christoph Riessner
69 and others for alleged infringement of letters patent reissue No. 7751 in or about the summer of 1878?

(The same objection, and as not cross-examination, and also as not the best evidence on the point enquired of.)

A. I believe I was, but I don't know the number of the patent I was sued on.

Cross-Q. 50. You are aware, are you not, that it referred to the water bath?

(The same objection, and as the record of that suit would be the best evidence.)

A. I am not positive, but I think it did refer to it.

Cross-Q. 51. Will you please look at the paper now shown you, and state whether the reissue 7751 is not the patent on which the suit was brought?

(The same objection, and also as not referred to in the defendants' answer.)

A. I believe it was.

Cross-Q. 52. In said suit were you not examined as a witness, and does not the paper which I now hold in my hand contain your cross-examination? Before answering this question please read so much of this paper as purports to contain your cross-examination.

(Objected to on the same ground, and also as incompetent, the paper not being the original paper from the files of the court, and also as it refers to exhibits that are not produced, and it would, therefore, not assist the court in understanding it.)

A. I suppose it is my examination, as I have signed it there on page 86, if those are the same papers.

Cross-Q. 53. Have you any doubt those are the same papers; if you have will you be kind enough to read said papers and answer the question positively?

70 Q. I have no particular reason to doubt it.

Cross-Q. 54. In your cross-examination in said suit taken on the 9th October, 1878, you seem to have compared certain exhibits, being oil stoves, with certain letters patent, for the purpose of showing the similarities and differences between such exhibits and the structures shown in the letters patent. Will you please state for how many years past you have considered yourself enough of an expert in kerosene-oil stoves to make such a comparison?

A. Five or six years, probably.

Cross-Q. 55. During all said period do you consider that you have been an expert competent to testify where kerosene-oil stove patents were involved?

A. I consider myself competent to tell the differences and similarities in different stoves.

Cross-Q. 56. And also the differences and similarities between different stoves and the structures shown in different letters patent?

A. I think I could; yes, sir.

Cross-Q. 57. And you consider that you have been competent to do this continuously for the 5 or 6 years last past, do you?

A. I think so.

Cross-Q. 58. Were you ever sued for infringement of the Billings patent No. 45957 in or about the summer and fall of the year 1879?

(Objected to as entirely immaterial and not cross-examination.)

A. I believe I was.

Cross-Q. 59. Did you not have occasion at that time, when you were first sued, to make a careful examination of the Billings patent, No. 45957?

(The same objection.)

A. I don't recollect now, but I think I did.

Cross-Q. 60. The Kerosene Lamp Heater Company was complainant in said suit, was it not?

(The same objection.)

71 A. Yes, sir.

Cross-Q. 61. In said suit did you not make an affidavit, sworn before T. B. Mosher, notary public, N. Y. county, June 12, 1879, in which, among other things, you deposed and said as follows: "I am furthermore informed, and believe it to be true, that the complainant has circulated rumors that he has obtained a decision in his favor under the Billings patent, which statement is utterly false, but which, nevertheless, was believed by many, and induced many to take licenses under the Billings patent. I am not sufficient of an expert to know whether or not I am an infringer of the Billings patent, but I have been careful to ask competent advice on the subject, and was informed by my counsel, and also by those in the trade who were acquainted with the prior state of the art, that

I am not an infringer of said patent; furthermore, I believe that I cannot be an infringer of said patent, as I am justified under the patent of Billings, granted November 14, 1865, No. 50892, for coal-oil lamp for cooking purposes, in which patent the water bath, constructed with a no-chimney burner for cooking and heating purposes, is claimed; also the insulation of the water bath from the oil vessel, as used in my "Gem" stove.

(Objected to on the same ground, and as incompetent, the original affidavit being the only thing the witness could be asked to identify.)

A. I can't recollect whether I did or not now, or whether that is the statement I made or not.

(Recess taken till 1.15 p. m.)

1.15 O'CLOCK P. M.—After recess.

Counsel and witness present as before.

It is admitted by counsel for complainant that the cross-question 61, from the words "I am further informed" to the end
72 thereof is a correct quotation from the affidavit of James L. Sharp, referred to in the beginning of the question. This admission is made without waiving any objections made with reference to that affidavit.

Cross-Q. 62. On your examination as a witness in the suit of Riessner and others against Sharp, brought for infringement of reissue No. 7751, were you examined on the 4th, 9th, and 17th days of October, 1878, and on the 11th day of February, 1880, and on such examination were the following proceedings had, and were you asked the following questions, and did you make the following answers?

"Q. What is your name, age, residence, and occupation?

"A. James L. Sharp; 49 years; I reside [at] 155 West Fourteenth street, New York city; manufacturer of gas and oil stoves, and deal in the same.

"Q. How long have you manufactured and sold kerosene-oil stoves?

"A. Kerosene-oil stoves I have sold as far back as three years.

"Q. Will you please state the trade names by which the various stoves sold by you were known?

"A. I sold one called the Victor oil stove, about three years ago; that was the commencement of oil stoves; I sold an oil stove called the Gem; I sold an oil stove called the Reliance; that is all the oil stoves, I believe.

"Q. Please look upon the coal-oil stove Complainants' Exhibit Gem—J. M. Deuel, Exr., and state whether it is a sample of the coal-oil stove sold by you.

"A. It looks very much like my make.

"Q. Please state what difference, if any, there is between complainants' Exhibit Gem and the coal-oil stoves sold by you known as the Gem.

"A. I don't see any particular difference in the two stoves at all.

"Q. Is the construction in all respects identical, to the best of your knowledge?

"A. They look as though they were.

"Q. Question repeated.

"A. I believe they are, as near as I can answer, without bringing another one here and measuring them.

73 "Q. When did you begin to sell the Gem coal-oil stove?

"A. I think about a year ago last spring.

"Q. Describe the stoves that you sold in 1872, especially with reference to the arrangement of their wick wheels, and wick-wheel shaft, and to their water reservoir, if any they have?

"A. The stove was called the Tom Thumb at that time; it was similar in style to Defendant's Exhibit No. 2; the wick wheels and shafts were covered; only a short portion of the rod stuck out from the body similar to the Gem; the rods were a little more exposed from the sides than either of these, and they, the stoves, had a water chamber on top of the oil chamber.

"Q. Did the water reservoir in each of the stoves that you so sold in 1872 or '3 cover the entire upper surface of the oil reservoir as in Defendant's Exhibit No. 2?

"A. It did.

"Q. What difference, if any, was there between the oil reservoir, water reservoir, wick-wheel housings and wick-wheel shaft coverings, as the same appear in Defendant's Exhibit No. 2, and the stoves which you sold, as stated, in 1872 or 1873?

"A. In practical use, there is no difference whatever.

"Question repeated. I don't want any limitation; if there is a difference, point it out?

"A. The difference—this (pointing to Defendant's Exhibit No. 2) shows each shaft with separate covering, and on the stove I sold in 1872 or 1873, called the 'Tom Thumb,' the wick-wheel shafts and wick wheels were both covered or housed with one cover covering them both, and the water reservoir was covered on top, whereas this in Defendant's Exhibit No. 2 is exposed."

Counsel for defendant in said suit then showed witness a certified copy of letters patent No. 111,512 granted to J. Bowles, February 7, 1871, and asks:

"Q. How does the single covering for the shafts of the Tom Thumb stoves compare with the single covering marked V, for the wick-wheel shafts, which is shown and described in the patent now shown you.

74 "A. I should think they were identically the same."

Counsel for defendant in said suit then offered in evidence a certified copy of the patent No. 111,512, above referred to, and the same was marked Def't's Exh. No. 3, Oct. 9, 1878, J. M. D., Ex'r.

Q. Have you read and do you understand the invention described in Def't's Exh. No. 3.?

"A. Yes, sir.

"Q. Have you read and do you understand the alleged invention described in the Reissue Patent Complainants' Exhibit A (referring to the reissue No. 7751).

"A. Yes, sir; I do.

"Q. Please look at Def't's Exh. No. 3 and state whether you find the same to describe and illustrate a coal-oil stove having its wick wheels, wick-wheel shafts, and the entire upper surface of its oil reservoir covered by a water reservoir substantially as and for the purpose specified in Exhibt A.

"A. Yes, sir; I find identically the same thing in every respect.

"Q. Please look at Exhibit 3 and state whether you find described and shown therein a coal-oil stove in which the entire upper surface of its oil reservoir is protected by water reservoir, and its wick wheels and their shafts are inclosed by means of housings that are within said water reservoir and below its upper edge, substantially as and for the purpose shown in Complainant's Exhibit A.

"A. I find them both the same—the same purpose, the same thing.

"Q. Please state whether or not the first claim of Exhibit 3 describes the device shown in Defendant's Exhibit No. 2 and also in Complainants' Exhibit A, for the purpose of covering and embracing the wick tubes, their toothed wheels and rods, and of placing the water pan immediately upon the oil reservoir.

"A. It does.

"Q. Please read the first claim of Exhibit No. 3, so that the examiner may enter the same upon the record.

"A. Witness reads: 'Arched recesses formed as herein de-
75 scribed upon the under side of the water pan H, and terminating in extended tubes projecting upwardly from the arches on the upper side thereof for the purpose of covering and embracing the wick tubes of the lamp and the toothed wheels and rods operating its wicks, and to permit the water pan to rest immediately upon the lamp, the whole being arranged and combined substantially as herein set forth.'

"Q. Please compare stove, Exhibit Gem, with the Reissue Patent Exhibit A, and state whether the arrangement of water pan and its appendages in Exhibit Gem is at all similar to what is shown, described, and claimed in Reissued Patent Exhibit A.

"A. They are not very similar.

"Q. What are the principal points of difference?

"A. The gem has a separate water pan elevated sufficiently to have a free current of air circulate between the oil and the water, whereas Exhibit A has no air space between the oil and the water?

"Q. Is this difference material; and, if so, why?

"A. It is quite important to have a circulation of air between the water and the oil; it helps to keep the oil cool, which is quite important.

"Q. Does the water and the water reservoir get hot when stoves like Exhibit Gem and Exhibit No. 2 are used?

"A. It does get hot.

"Q. Is the metal which is interposed between the oil and water in Exhibit No. 2 a good conductor of heat?

"A. It is so considered; the way it is japanned it is a good conductor.

"Q. It is true, then, that the hot water in Exhibit No. 2 will keep the oil beneath it cool?

"A. No, sir; it will not.

"Q. The heated water will, in Exhibit No. 2, transmit its heat to the oil below, will it not?

"A. Yes, sir.

"Q. Is it at all possible that the heat of the water can be transmitted to the oil in Exhibit Gem?

"A. I don't think it can.

"What kind of oil is usually burned in stoves like Exhibits No. 2 and Gem?

"A. Kerosene oil usually; coal oil some call it.

76 "Q. This is a volatile oil, is it not?

"A. Yes, sir.

"Q. What is the objection to heating such oil in the oil reservoir?

"A. If it gets too hot it is apt to explode the stove."

Adjournment was then taken in said suit to October 17, 1878, when the questions and answers were resumed.

"Q. In your answers to questions 13 and 17 you state that you make a stove called the Gem at the present time. Please state how the same differs in construction from Exhibit Gem.

"A. In the Gem manufactured by me now the racket box and the spindle or rod is in the air space below the water pan; there is a large square feeder behind and cover instead of a screw cap.

"Q. You have spoken of the Tom Thumb stove which was sold by you as long ago as 1872 or 1873. State whether you know how long a time, previous to 1872, stoves like the Tom Thumb described by you have been in market in this country.

"A. To my best knowledge, they must have been in market at least two years; how much longer I don't know."

(After a long interval the witness was further examined on February 11, 1880.)

"Q. How accurate is your recollection of the construction of these stoves known by the name of Tom Thumb?

"A. My recollection is quite accurate in that respect.

"Q. How do you know that you did not first purchase these Tom Thumb stoves in 1874 instead of 1872 or 1873, so as to be able to be positive that it was prior to 1874?

"A. Because I purchased them before I made any oil stoves.

"Q. Did you make oil stoves before 1874?

"A. Yes, sir.

"Q. Have you ever read through the entire specification of

77 Bowles' patent No. 111,512, dated February 7, 1871, referred to by you in your evidence?

"A. Yes, sir.

"Q. What is your object in putting your water bath in your coal-oil stoves? State its operation.

"A. The object was to assist in keeping the oil cool.

"Q. How does the water keep the oil cool, as a non-conductor of heat, or because it keeps cool by evaporation, or for what reason?

"A. It doesn't keep the oil cool, but that was the intention of it.

"Q. You say the water becomes heated; does it or not serve to heat the oil if placed directly upon the oil chamber?

"A. It does.

"Q. When was water first used, to your knowledge, on top of oil reservoirs, or lamp stoves?

"A. About 1865, I think.

"Q. Who used it so, if you know?

"A. It was used by one Doctor Allen, to my first knowledge of it."

Adjourned by consent to Thursday, January 5th, 1882, at 10.30 a. m.

NEW YORK, *January* 5, 1882—10.30 a. m.

Met pursuant to adjournment.

Present: Counsel as above.

Counsel for complainant objects to the question as utterly incompetent and immaterial, and as not cross-examination, and as a garbled extract of a portion of the testimony, which is meaningless in the garbled condition.

Also objected to on the ground that the foregoing extract is calculated to mislead the court into the belief that the entire testimony of this witness has been copied into the foregoing question from the record, and he asks the officer to certify that of the entire
78 examination of the witness in said suit of Riessner *vs.* Sharp only the following questions and answers have been reproduced in the foregoing quotation, to wit: Numbers 1, 2, 3, 4, 6, 7, 8, 12, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 91, 102, 116, 128, 129, 130, 131, 132, 136, 137, and 138.

The counsel for defendant asks if the counsel for complainant admits that the questions and answers quoted and forming a part of cross-Q. 62 are correct extracts from the examination of James L. Sharp in the said suit of Riessner *vs.* Sharp, heretofore referred to.

Counsel for complainant so admits without waiving any of the objections heretofore mentioned against said extract or any part of said testimony.

Counsel for defendant admits that the whole of the said deposition was not quoted in the last question, but only the questions and answers in said deposition numbered as above stated by complainant's counsel, which, in his opinion, are the only portions of said deposition which are relevant to the suit at bar.

A. As my counsel has admitted it, I believe it is true.

Counsel for defendant now offer in evidence a certified copy of reissue No. 7751, being the paper which was referred to in the deposition of James L. Sharp in the case of Riessner *vs.* Sharp, as Complainant's Exhibit "A," and the same is marked Sharp *vs.* Riessner, Defendant's Exhibit Frey Reissue, J. A. S., Ex'r, January 5, 1882.

(Objected to by complainant's counsel on the ground that the same reissued patent is not mentioned in defendant's answer, and as utterly immaterial as to any issues in this case, and incompetent, and as not properly introduced in the cross-examination of this witness.)

79 Counsel for defendant offers in evidence a certified copy of letters patent granted to John A. Frey October 20, 1874, No. 156,149, and the same is marked Sharp *vs.* Riessner, Defendant's Exhibit Frey Original Patent, J. A. S., Ex'r, January 5, 1882.

It is admitted that said last-named exhibit is the same as Defendant's Exhibit No. 1, referred to in the deposition of James L. Sharp in the case of Riessner *vs.* Sharp.

(Counsel for complainant objects to the exhibit as incompetent to any issue in the case, as immaterial, and as not properly introduced in evidence during the cross-examination of this witness.)

Counsel for complainant asks counsel for defendant to admit that the suit from which the testimony has been partly quoted, and which was entitled Riessner and others *vs.* Sharp was pending in this court, and that it was settled and discontinued by stipulation, and that neither the testimony from which the extract had been made nor the exhibits that were offered during the taking of said testimony has since been filed in court.

Counsel for defendant admits that said suit has been settled; whether a formal discontinuance has been entered counsel does not remember.

He further admits that neither the testimony referred to nor the exhibits are now on file.

Counsel for complainant also asks counsel for defendants to admit that the suit entitled the Kerosene Lamp Heater Co. *vs.* Sharp, to which he made reference in this cross-examination, was pending in this court and has been settled and discontinued, and that no testimony whatever has been filed in this court in connection with this suit.

Counsel for defendant admits that said suit has been settled, but his impression is that the testimony in said case has been on file.

80 Counsel for defendant offers in evidence the stove which was referred to in the deposition of James L. Sharp, in the case of Riessner *vs.* Sharp, as Exhibit "Gem No. 2," and the same is marked Sharp *vs.* Riessner, Defendant's Exhibit Sharp Stove, J. A. S., Ex'r, January 5, 1882.

(Counsel for complainant objects to said offer on the following grounds:)

1st. That it is immaterial to any issue in the case.

2d. That it is the private property of the complainant, and was standing in this room, but that counsel for defendant violates the privileges accorded him here by making things that do not belong to him or his client, and as to which he has not even asked the permission of complainant or his counsel, evidence and exhibits on be-

half of the defense, and gives notice that at the hearing a motion will be made that said offer be set aside, and that if it is not set aside and the exhibit taken away from the possession of complainant without his consent counsel for defendant be ordered to pay for the same.

Counsel for defendant states that the exhibit referred to is an exhibit offered in evidence during the taking of testimony in a suit pending at the time it was offered, and that said exhibit properly belongs on the files of the court, and is only by courtesy in possession of complainant or his counsel, but if complainant's counsel is desirous of retaining said exhibit he is willing that a duplicate be substituted, for which defendants are perfectly willing to pay.

Counsel for defendant offers in evidence a certified copy of letters patent No. 111,512, which is a copy of the same patent, a certified copy of which was referred to in connection with the deposition of James L. Sharp, in Reissner *vs.* Sharpe, and offered in evidence in connection therewith as Defendant's Exhibit No. 3, and the same is marked Sharp *vs.* Riessner, Def'ts' Exhibit Bowles Patent, J. A. S., Ex'r, January 5, 1882.

(The same objection as to Exhibit Frey Original Patent.)

81 Cross-Q. 63. Will you please look upon the paper now shown you, read the same, and state whether it is not a copy of your answer in the case of Riessner and others *vs.* Sharp, before referred to, disregarding the pencil marks on the left-hand margin.

(Objected to as utterly incompetent, and counsel for complainant asks the witness not to answer the question.)

A. I decline to answer.

Cross-Q. 64. Will you please look at a certified copy of letters patent granted to William B. Billings November 14, 1865, No. 50892, now shown you, and state whether you now have, or ever have had, any interest therein or license thereunder?

(Objected to as utterly incompetent and not cross-examination, and witness is instructed by his counsel not to answer the question.)

A. I decline to answer.

Cross-Q. 65. Is it not true that for several years past you have known of the existence of the letters patent referred to in the last question, and have been acquainted with its contents, and have had a territorial interest therein?

(The same objection and the same instruction to the witness.)

A. I decline to answer.

Cross-Q. 66. Will you please look at a certified copy of letters patent granted to John Allen September 26, 1865, No. 50087, now shown you, and state whether or not it is true that for several years past you have known of the existence of letters patent referred to,

and have been acquainted with its contents, and have claimed to own an interest therein.

(The same objection and instruction to the witness.)

A. I decline to answer.

Cross-Q. 67. Will you please look at a certified copy of letters patent granted James H. Thorp May 24, 1870, No. 103,526, now shown you, and state whether or not it is true that for several years past you have known of the existence of the letters patent referred to, and have been acquainted with its contents.

82

(The same objection.)

A. I have known of this patent, and have been acquainted with its contents.

Cross-Q. 68. For how many years past?

(The same objection.)

A. Three years, I think.

Cross-Q. 69. It came to your knowledge, did it not, that the firm of C. Riessner & Co. was sued for infringement of the Fish patent, reissue 7069, at or about the time that suit was brought against you for infringement of the said patent?

(The same objection and as calling for hearsay.)

A. Yes; I believe they were about that time.

Cross-Q. 70. Is it not also within your knowledge that the stove on which they were attacked was what was known as the Summer Queen?

(Objected to as utterly incompetent, and the witness is instructed not to answer the question.)

A. I decline to answer.

Cross-Q. 71. Will you please state for how many years back you have known of the existence of the Summer Queen stove, constructed like, or substantially like, Complainant's Exhibit Riessner Stove?

A. Certainly; two years; I remember that; or maybe longer; two years, and maybe three years.

Cross-Q. 72. Did you not know of the existence of such Summer Queen stoves prior to the time that suit was brought against you on the Fish patent, reissue 7069?

(Objected to unless the date of the commencement of the suit be given.)

83

Counsel for defendant states that he wishes the question answered without reference to any dates.

A. I can't say that I do.

Cross-Q. 73. Did you not know of the existence of any Summer Queen stoves made prior to the commencement of said suit?

(The same objection, and as not limited to the exhibit complained of.)

A. I think I have heard of a stove called that.

Cross-Q. 74. How many years before the commencement of said suit?

(The same objection, and as utterly incompetent.)

A. That I can't state.

Cross-Q. 75. Was it as much as two years, according to your best knowledge?

(The same objection.)

A. It might have been a year; it might have been two; I can't say now.

Cross-Q. 76 (erased).

Cross-Q. 77. Can you state any particular in which the Complainant's Exhibit Reissner Stove differs from the stoves referred to in the last three questions? And, if so, please mention the same fully and at large.

(Objected to as incompetent, as not cross-examination, and the witness is instructed not to answer the question.)

A. I decline to answer.

Counsel for defendant objects to the instructions given to the witness in all cases where the witness was instructed not to answer, and gives notice of a motion for attachment against the witness as soon as the motion papers can be prepared.

84 Counsel for defendant, in view of the fact that a recess is now to be taken, requests the officer to instruct the witness not to converse with any one, his counsel included, on the subject of his examination until his examination is completed.

Counsel for complainant denies the right of the officer to give any such instruction that will in any way abridge the right of intercourse between client and counsel.

It being now 1.10 p. m., counsel for complainant asks for a recess for twenty minutes.

(Counsel for defendant objects to the witness leaving the room before the examiner decides the question raised.)

Counsel for complainant, at 1.48 p. m., returns to the examination-room and finds that Mr. Lee has left, but that the witness has stayed, and also the examiner's clerk, and counsel instructs the witness that he should now go and get his dinner and be back in twenty minutes.

James F. Horan, Esq., states that he is here representing the defendant, and has been here since Mr. Lee left.

The examiner declines to instruct the witness that he must not converse with his counsel.

After recess.

Counsel and witness present as before.

Cross-Q. 78. Will you please examine the Exhibit Riessner Stove and point out where you find in said exhibit the perforated top plate

A^1 referred to in Complainant's Exhibit Patent and indicate such top plate so that the court can readily understand what you refer to?

A. I have marked the plate A^1 in three places in Exhibit Riessner Stove.

Cross-Q. 79. And the three bars extending from the outer
85 edge of the water pan to the circle of iron upon which the cylinder rests constitutes the plate A^1; is that correct?

Counsel for complainant asks whether the counsel intends to omit the central ring from the question or not.

Counsel for defendant states that he does not perceive any ambiguity in the question.

(Question objected to as assuming that which does not appear from the evidence.

A. Yes, sir.

Cross-Q. 80. In the structure shown in Complainant's Exhibit Patent does not the water vessel A extend down around the outer edge of the oil holder so that the water will be placed in a circle surrounding the outer circumference of the oil holder?

A. Yes; I think it does.

Cross-Q. 81. Is there any such arrangement as that in Complainant's Exhibit Riessner Stove?

A. I don't see any; no, sir.

Cross-Q. 82. Will you please point out any perforations in the top plate A^1 in Complainant's Exhibit Riessner Stove?

A. One, two, three.

(Witness points to the spaces between the portions of the plate marked A^1.)

Cross-Q. 83. You mean to say, do you, that those three spaces are the perforations?

A. Yes, sir.

Cross-Q. 84. Have you ever yourself manufactured any coal-oil stoves which you think embody the features of Complainant's Exhibit Patent?

A. Yes, sir.

Cross-Q. 85. Can you point out any such stove among those on the table before you?

A. Yes, sir.

(Witness produces a stove.)

Cross-Q. 86. How long have you manufactured stoves made exactly on the pattern of the one you now produce?

A. I made them like the sample here produced since 1878, with the exception of the hinge; with the hinge I made them about a year—that style of hinge.

86 Counsel for defendant offers in evidence the stove referred to, and the same is marked Defendants' Exhibit Sharp's Stove, J. A. S., Ex'r, January 5, 1882.

Cross-Q. 87. Will you please point out the water vessel A in said Exhibit Sharp's Stove?

(Objected to as not cross-examination.)

A. The pan underneath the cylinder, colored green on the inside and brown on the outside.

Cross-Q. 88. I notice in the bottom of said pan four perforations, and also numerous small perforations on one side of the water pan, near the lower part of its outer circumference. Do not these perforations make it impossible to use said pan as a water pan?

(The same objection, and as immaterial, and the witness is instructed not to answer the question if by answering it he would expose his business secrets or an invention not yet patented.)

A. I decline to answer the question.

Cross-Q. 89. Why do you decline to answer the question?

A. Because it is a little privacy of my own.

Cross-Q. 90. I do not inquire in regard to any of your private affairs; I only wish to know as a matter of fact whether the perforations referred to do not prevent the pan from being used as a water pan, and you, as a manufacturer, can certainly give me the information, which I now request you to do.

A. It does prevent it from holding water, of course.

Cross-Q. 91. Will you please mark on Defendants' Exhibit Sharp's Stove the perforated top plate A^1, referred to in Complainant's Exhibit Patent?

(Objected to as not cross-examination.)

A. I have marked the plate with three crosses.

Cross-Q. 92. Before you manufactured stoves like Defendants' Exhibit Sharp's Stove you made stoves with the cylinder supported by a circular ring of metal, which was supported in part by struts of metal extending perpendicularly from the outer circumference of the supporting cylinder into the water pan, did you not?

87

(Objected to as not cross-examination, and witness is instructed not to answer the question.)

A. I decline to answer the question.

Cross-Q. 93. Will you please state how long you have known of the existence of letters patent No. 177,334?

A. About a year, I think.

(Counsel for defendant states that, in view of the refusal of the witness to answer questions propounded to him, he objects to such refusal, and gives notice that he will, with due expedition, move that an attachment issue against the defendant for his failure to answer the questions propounded.

Counsel also states that he has other questions of a similar nature to those, answers to which have been refused, which, in view of the witness' refusal to answer, it is useless to ask at the present time,

and he will therefore postpone all such questions until after the motion for attachment has been decided.)

Cross-Q. 94. Will you please look upon the paper now shown you, and state whether the two signatures on page No. 8 thereof purporting to be yours are yours?

(Objected to as not cross-examination and as immaterial.)

A. They are very much like mine.

Cross-Q. 95. Have you any doubt but that they are yours?

(The same objection.)

A. I think they are, sir; I have no doubt about them.

(Counsel for defendant offers in evidence the paper referred to, being the original answer on file in the office of the clerk
88 of the United States circuit court for the southern district of New York in the case of The Kerosene Lamp Heater Company *versus* James L. Sharp and Gilbert G. Wood, bearing the file-mark "filed August 3, 1876," and verified before John A. Shields July 31, 1876.)

(Objected to as incompetent and immaterial, and not properly introduced on cross-examination of this witness.)

Cross-Q. 96. Will you please look at the paper now shown you and state whether the two signatures on the last page thereof are yours?

(Same objection.)

A. They look like mine, sir.

Cross-Q. 97. Have you any doubt that they are yours?

(The same objection.)

A. I don't doubt it, sir.

Counsel for defendant offers in evidence the paper referred to, being the original answer on file in the office of the United States circuit court for the southern district of New York, in the case of Christoph Riessner, Adam Riessner, and John A. Frey *versus* James L. Sharp, bearing the file mark "filed July 13, 1878," and verified before T. B. Mosher, notary public, July 5, 1878.

(The same objection.)

Counsel for defendant states that, in view of the witness' refusal to answer the questions before referred to, *that* he has no further questions to ask on cross-examination until after the decision of the motion for attachment, which he is about to make.

Redirect by A. V. BRIESEN, Esq.:

Q. 98. In answer to cross-Q. 79, I understood you to say that the perforated top plate of Exhibit Riessner Stove was com-
89 posed of three bars, that you marked A[1]. Did you mean to be understood that the inner ring, of which said three bars form a part, was not a part of said top plate?

(Objected to as already answered and as leading.)

A. It is, of course, a part of the top plate.

Q. 99. State whether or not Exhibit Sharp Stove was brought by you to this office to show me a certain new invention made by you, and which invention had reference to the holes in the bottom and sides of the water pan.

(Objected to as irrelevant.)

A. It was.

Q. 100. You have testified that you began to make things like Exhibit Sharp Stove about two years ago, excepting a certain form of hinge. Your assignment of Exhibit Complainant's Patent is dated April 18, 1881. Did you then infringe upon the patent, up to the date of the assignment?

(Objected to as irrelevant and incompetent.)

A. I considered I did.

Q. 101. When did you so consider that you did, and how came you to so consider?

(Objected to as irrelevant.)

A. I forget the date when it was; it was some time last spring I was informed that I infringed by the patentee; I think it was in February or March he brought me the patent to see, and, after examining it, I made up my mind that I was infringing it, and I felt it my duty to buy the patent, which I did.

Q. 102. In buying the patent, did you or not settle for your past infringement?

(Objected to as irrelevant and incompetent. If the settlement was in writing, the written instrument is the best evidence.)

90 A. I did, and I have the writings to show for it.

Q. 103. Who was first to adopt the perforated top plate in the combination set forth in the first claim of Complainant's Exhibit Patent, you or Riessner & Co.?

(Objected to as irrelevant and incompetent.)

A. I was.

Q. 104. Did you or not give notice to the defendants, or cause notice to be given them, of said infringement of the Hutchins patent?

A. I did; yes, sir.

Q. 105. Did you receive a reply thereto?

A. I received a reply through their counsel.

Q. 106. Look at the paper now shown you, and state whether that is the said reply, or a copy thereof.

A. It is the same paper.

The paper is offered in evidence by counsel for complainant, and marked Complainant's Exhibit Lee's Threatening Letter, J. A. S., Ex'r, Jan'y 5, 1882.

(Objected to as immaterial.)

Q. 107. Defendants' counsel writes in this Complainant's Exhibit

Lee's Threatening Letter "that you know that Hutchins patent, 177,334, has no relation whatever to the goods manufactured and put upon the market by" the defendants. Did the writer of that letter state the truth in said quotation?

A. No, sir.

Q. 108. In said letter it is also stated that this suit has "all the elements of a malicious prosecution, intended only to interfere with their (defendants') trade." Is that the truth?

(The same objection.)

A. No, sir.

Counsel for complainant offers in evidence the stove, which was placed on the files of this court by the defendants in this
91 suit and referred to in the affidavit of the defendant Meier, and which is marked Exhibit Defendants' Stove, said affidavit having been read in opposition to the motion to overrule the plea, and gives notice that at the hearing he will refer to said stove, and also to said affidavit.

Q. 109. How does Exhibit Defendants' Stove compare with Exhibit Riessner Stove?

A. They are precisely alike—only two different sizes.

Recross by Wm. H. L. Lee, Esq.:

Recross-Q. 110. In Q. 100 you are referred to the date of your assignment of Exhibit Complainant's Patent, April 18, 1881, and in your answer you said that you considered that you at that time infringed upon said patent. Will you please state for how long a time you consider that you have infringed upon said patent.

A. Well, ever since I made stoves made in that shape; somewhere about 1878.

Recross-Q. 111. You say that you adopted the perforated top plate in the combination set forth in the first claim of Complainant's Exhibit Patent before C. Riessner & Co. did so. How do you know this?

A. I know it because they put no stove of this construction on the market until about a year after I had that device.

Recross-Q. 112. Did all the stoves which you have manufactured and sold, known by the trade name of the Gem, contain the combination set forth in the first claim of Complainant's Exhibit Patent?

A. No, sir.

Recross-Q. 113. For how many years did you manufacture Gem stoves before you placed in them the combination set forth in the first claim of Complainant's Exhibit Patent?

(Objected to as not recross-examination, and as foreign to the matter at iesue, and the witness is instructed not to answer the question.)

A. I decline to answer.

Recross-Q. 114. Describe to me the formation and structure
92 of the Gem stove made by you before you began to make those like the Exhibit Sharp Stove, and which you do not

claim embodied the combination set forth in the first claim of your Exhibit Patent.

(Objected to as not cross-examination nor recross, and witness is instructed not to answer the question.)

A. I decline to answer.

(The same objection and notice as was given in regard to previous refusals. This applies to recross-Q. 113 also.)

Recross-Q. 115. You have stated that you settled for past infringement of the Hutchins patent, and that you have the writings to show for it. Were there any writings other than the Exhibit Assignment already offered in evidence?

A. Yes, sir; there was, but I could not put my hand on it; my young man is of the opinion that I took it, with other writings, home with me about a week ago; I will look for them.

Recross-Q. 116. Will you produce the same at some future session, if you can find it?

A. I will.

Counsel for defendant asks for an adjournment, for the purpose of enabling the witness to produce the paper referred to in the last two questions. He also states that he will give a reasonble extension of time to complainant to take testimony for such purpose.

Adjourned to Friday, January 6, 1882, at 9 a. m., and complainant's time to take testimony is extended one day.

JAS. L. SHARP.

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

93 NEW YORK, *January 6th*, 1882—9 o'clock a. m.

Met pursuant to adjournment.

Present: A. V. Briesen, Esq., of counsel for complainant, and Wm. H. L. Lee, Esq., of counsel for defendant.

Cross-examination of Mr. SHARP continued by WM. H. L. LEE, Esq.:

Cross-Q. 117. Have you the paper referred to at the end of your examination yesterday?

A. That paper I can't find anywhere; I suppose the assignment would be all sufficient; I suppose it is destroyed.

Cross-Q. 118. Do you remember what the nature of the paper was?

A. I don't recollect exactly what it was.

Cross-Q. 119. Did it contain a release of all claims against you for the infringement of the letters patent on which this suit is brought?

A. I couldn't state whether it did or not, now.

Cross-Q. 120. Was it ever recorded in the Patent Office?

A. No, sir; not to my knowledge.

Cross-Q. 121. Did it concern anything beside the letters patent on which this suit is brought, and claims under it?

A. I don't remember, but I don't think it did; I don't remember now.

Cross-Q. 122. What was the consideration expressed in said paper?

(Objected to as incompetent, and as prying into the business secrets of this witness.)

A. There was a sum of money that I don't care to state.

Cross-Q. 123. You said that you would produce the paper if you could; if you had done so I would have ascertained its entire contents. Now, I wish to know, as a portion of the contents of this lost paper, what consideration was therein expressed?

(The same objection.)

94 A. I don't propose to give the sum.

(The same objection as to previous refusal of witness to answer questions and the same notice.)

Counsel for defendant here states that he is unable to proceed further on account of the witness' refusal to answer various questions; but in case the witness is required to answer the questions which he has refused to answer, or any of them, he is desirous of an opportunity for further cross-examination.

Redirect by A. V. BRIESEN, Esq.:

Q. 124. Are you sure that the sum you paid Mr. Hutchins was stated in the paper which you lost?

A. No, sir; I am not sure of that.

Q. 125. Have you or not, beside the assignment which is in evidence, a receipt for the sum of money you paid the patentee at or about the time you obtained the assignment?

(Objected to unless the paper itself is produced, which is the best evidence. Question withdrawn, in view of the objection.)

JAS. L. SHARP.

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

(Complainant rests his *prima facie* case.)

95 NEW YORK, *February* 9, 1882—10.30 o'clock a. m.

Met pursuant to notice.

Present: A. V. Briesen, Esq., of counsel for compl't, and Wm. H. L. Lee, Esq., of counsel for def'ts.

The cross-examination of Mr. JAMES L. SHARP continued by WM. H. L. LEE, Esq.:

Cross-Q. 126. Your attention has been called to an order of court directing you to answer certain questions which you previously de-

clined to answer, among which is cross-Q. 64. I now repeat cross-Q. 64 and show you a certified copy of the patent therein referred to.

(Objected to as not cross-examination, and as not material to any issue in this cause.)

Cross-Q. 64 is now read to the witness.

A. I believe I did have a territorial interest in that at one time.

Cross-Q. 127. Have you ever looked at said letters patent or a copy thereof?

(The same objection.)

A. I think I may have at some time; I don't recollect now.

Cross-Q. 128. Did you not purchase an interest in said letters patent, and do you mean to say that before you did so you were uncertain whether you did or did not look at said letters patent or a copy thereof and ascertain its contents?

(The same objection.)

A. I think it is very likely that I did look at the patent; I cannot call it to mind now.

Cross-Q. 129. Please look upon a certified copy of said letters patent which I now show you and state whether or not said letters patent does not show a water bath over a coal-oil stove.

96

(Objected to as incompetent and immaterial, not cross-examination, and also as it does not appear that the witness understands, or pretends to understand, the said patent.)

(Also as the patent is the best evidence in the matter enquired about, and counsel for complainant protests against this line of cross-examination as vexatious, and in no sense coupled with any issue in the cause.)

A. I believe it does.

Cross-Q. 130. Is not the water bath shown in said letters patent substantially the same as the water bath in Complainant's Exhibit Reissner Stove?

(The same objection.)

A. The water bath is shown there. I cannot say whether it is exactly the same or not.

Cross-Q. 131. Why are you unable to say whether or not it is the same, or substantially the same?

(The same objection, and as counsel does not say what he means by substantially the same.)

A. It may be substantially the same. I cannot say whether it is just the same or not.

Cross-Q. 132. (Cross-Q. 130 repeated.)

(The same objection and as already answered.)

A. They may be substantially the same, but I can't say whether they are just alike or not. That is the best answer I can give you to the question.

Counsel for complainant desires it to be recorded that the patent referred to had not been before the witness when he answered the last three questions. It had been taken away from him by counsel for defendant.

97 Counsel for defendants desires the examiner to certify that the witness examined the patent referred to and then put the same on the table or handed the same back, apparently, on completing his examination.

The examiner's clerk certifies that when his attention was called to the patent it was lying on the table in front of defendants' counsel. The witness had previously examined the patent, but how it left his hands the examiner's clerk does not know.

Cross-Q. 133: In your answer to cross-question 132 you end by saying that "that is the best answer I can give you to the question." Are you unable to give a clearer answer because you do not consider yourself enough of an expert to make the comparison between the water bath in the patent referred to and the water bath shown in Complainant's Exhibit Reissner Stove?

(The same objection as to cross-Q. 130.)

A. They both show a water bath, and they are both intended for the same purpose, but whether they are alike or not I can't say.

Cross-Q. 134. Question repeated.

(The same objection.)

A. The only difference that I can see is that one appears a little more raised from the oil tank than the other.

Cross-Q. 135. Question repeated.

(The same objection, referring to the Billings patent.)

A. Well, the water bath looks here as though it might be closed on the top. I cannot tell from the drawings whether it is or not; I never saw one on the stoves.

Cross-Q. 136. Question repeated.

(The same objection.)

98 A. Well, as I have stated before, both stoves show a water bath, and the water bath in the Billings stove is raised higher from the oil tank than the other, and I should judge from the drawings in the Billings patent the top of the water bath is closed—fed by a filler.

Cross-Q. 137. Question repeated, and the attention of the witness is called formally to the fact, as it already has been called informally several times, that his answers have no pertinence whatever to the question.

(The same objection, and counsel for complainant submits that the formal notification should be in form of a question, as otherwise counsel for defendant has no right to address the witness; it is also submitted that the formal notification is not founded on fact.)

A. I don't think that I can explain it any better than I have.

Cross-Q. 138. Question repeated, and the witness is requested to read cross-Q. 132 himself before answering the question.

(The same objection and as already answered.)

A. I don't consider myself expert enough to explain that water bath on that stove any better than I have; if I did, I would be pleased to do so.

Cross-Q. 139. I wish you would answer my question, yes or no. Do you or do you not consider yourself enough of an expert to make the comparison between the structure shown in the patent referred to and the structure shown in Complainant's Exhibit Reissner Stove, so far as the water bath is concerned?

(Objected to, as the witness has already made the comparison, and also as entirely immaterial, and the witness is told by complainant's counsel that he is at liberty to frame his answers as he deems best, and that he is not obliged to answer yes or no simply. Objected to by defendants' counsel as tending to prompt the witness.)

99 A. No; I don't consider myself an expert to explain it any more clearer than I have.

Cross Q. 140. Is it not true that you are not enough of an expert to clearly understand what is shown in the Billings patent referred to, so far as the water bath is concerned?

(The same objection, and as it doesn't appear that the witness pretends to understand the contents of the Billings patent.)

A. I have tried to explain it as well as I understand the patent; that is as far as I can go.

Cross-Q. 141. Question repeated.

(The same objection and as already fully answered.)

A. Yes; I have acknowledged that I am not expert enough to explain it any different than I have.

Cross-Q. 142. You have said that you thought that the top of the water bath in the said Billings patent was closed at the top and fed by a filler. Will you please point out the filler to the water bath and the filler to the oil holder?

(Objected to as immaterial and not cross-examination.)

A. That is the filler to the water bath (pointing to figure 4 in the drawings), above the words "bath B;" there is no filler shown in the oil holder that I can see.

Cross-Q. 143. Then, am I to understand that the water bath in the Billings patent and the water bath in Complainant's Exhibit Reissner Stove are the same, with the exceptions mentioned, and that they perform the same functions, as far as you are enough of an expert to determine?

(Objected to as immaterial, as not cross-examination, and as already fully answered.)

A. I should think they did perform the same functions.

Cross-Q. 144. And they are of the same constructions, with the exceptions mentioned?

(The same objection.)

100 A. By looking at the drawings of the Billings patent they don't seem to be precisely the same construction.

Cross-Q. 145. If there are any other differences of construction besides those already mentioned please name them all.

(The same objection.)

A. There is none other that I know of; only those I have already described.

Cross-Q. 146. You have said that the water baths in the Billings patent and in the Exhibit Reissner Stove perform the same functions. Do they perform these same functions in the same manner? And, if not, state any differences fully and at large.

(The same objection, and as counsel does not say what functions he has reference to.)

A. I presume they do perform it in the same manner.

Counsel for defendant offers in evidence a certified copy of letters patent granted to William B. Billings November 14, 1865, No. 50892, for improvement in coal-oil lamps for cooking purposes, and the same is marked Def'ts' Exh. Billings Water Bath Patent, J. A. S., Ex'r, Feb'y 9, 1882.

(The introduction of said patent in evidence at this stage of the proceeding is objected to by counsel for complainant as incompetent and not properly cross-examination.)

Cross-Q. 147. Cross-Q. 65 was one of the questions which you previously declined to answer and which the court has directed you to answer; I now repeat it.

(Cross-Q. 65 is here read to the witness.)

(Objected to as not cross-examination, and as already fully answered, being the same substantially as cross-Q. 64.)

A. Yes, I had an interest in the patent and knew of it.

Cross-Q. 148. For the same reason and in like manner I now repeat cross-question 66.

(Objected to as not cross-examination, and as utterly immaterial.)

101 A. I did claim to own an interest in the patent of John Allen, and I think the one shown me is the one—I won't be positive—it looks like it.

Cross-Q. 149. I now show you a certified copy of the Allen patent referred to, and request you to read the specification, which is very short, and examine the drawings, and then tell me if you have any doubt that the patent referred to is the patent of John Allen, which you claim to own.

(The same objection.)

A. I have no doubt about it; I believe that to be the patent.

Cross-Q. 150. You read the specification and examined the drawings, did you not, before answering the last question?

(The same objection.)

A. Yes, sir.

Cross-Q. 151. Do you understand said specification and drawing, and the structure therein explained and described?

The same objection, and counsel for complainant gives notice that the testimony of this witness, so far as it is not cross-examination of his direct testimony, is defendant's testimony, and that it will be so urged at the hearing.

Counsel for defendant states that the question of the propriety of the line of his cross-examination had been twice involved in motions argued before the court, and each time the position of defendant's counsel had been upheld by the court; he therefore declines to consider the witness as his own.

Counsel for complainant submits that it is true that the court gave counsel for the defendant the benefit of a doubt, which has been dispelled, and will be more thoroughly dispelled as defendant's counsel will see, with this line of cross-examination; and because of this fact, complainant's counsel renews his objection, and makes the statement last above recorded.

Counsel for defendant denies that the court in any manner intimated any doubt as above suggested.

102 A. I understand it sufficiently to know that this was the one I was negotiating to try and have an interest in.

Recess taken till 2 p. m.

2 O'CLOCK P. M.—After recess.

Present: A. V. Briesen, Esq., of counsel for complainant.

At 2.30 p. m. the representative of counsel for defendant states that Mr. Wm. H. L. Lee, of counsel for the defendants, has just stated to him that he, Mr. Lee, is feeling quite unwell and does not consider himself able to further proceed with the examination this afternoon, and for that reason an adjournment is asked on behalf of the defendants.

Counsel for complainant asks the witness to sign his deposition so that he will not lose the benefit of his testimony should anything happen to the witness, and will consent to an adjournment of Mr. Sharp's examination to Saturday morning, February 11, 1882, at 10 o'clock, a. m.

JAS. L. SHARP.

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Saturday, February 11, 1882, at 10 a. m.

103 NEW YORK, *February* 11, 1882—10 o'clock a. m.

Met pursuant to adjournment.

Present: A. V. Briesen, Esq., of counsel for complainant, and Wm. H. L. Lee, Esq., of counsel for defendants.

The cross-examination of Mr. JAMES L. SHARP continued:

Cross-Q. 152. Please look upon the certified copy of the said Allen patent and state whether or not the drawing does not show a water bath covering an oil holder in connection with a kerosene-oil lamp?

(Objected to as immaterial and as not cross-examination.)

A. I should judge from the drawings it does show water on the top of the lamp.

Cross-Q. 153. Figure 1 shows a water bath on the top of the oil holder very similar to the water bath on top of the oil holder in the Exhibit Reissner Stove, does it not?

(The same objection.)

A. No, sir; I shouldn't think it did.

Cross-Q. 154. Please describe the differences.

(The same objection.)

A. The water seems to be closed in tight on this patent.

Cross-Q. 155. Is there any other difference?

(The same objection.)

A. Yes; I think there is.

Cross-Q. 156. State it; state all the differences that you can see.

(The same objection.)

104 A. No chance for the circulation of the air to come in contact with the water, and is supported solely from the centre of the lamp—the top part of it.

Cross-Q. 157. Please confine yourself to a comparison of the water baths. I am not asking you about anything else. Now, have you stated all the differences between the water bath in the patent and that in the exhibit inquired of?

(The same objection.)

And counsel is asked what he means by water bath when he seeks to limit the witness to that alone—whether the water itself or not.

Counsel for defendant says that if the witness does not understand the question he will endeavor to modify it so that he can understand it; but as the question seems to be a perfectly plain one he does not consider it necessary at present to further explain it.

A. As far as the water goes, probably they are the same, but for the water bath that is a different thing; they are different.

Cross-Q. 158. What are those differences—name every one of them?

(The same objection.)

A. One of them is open; the Reissner one is open; that is the one

you are referring to, and the one in the Allen patent is closed—it is tight.

Counsel for complainant desires it to be stated that the witness did not have the Allen patent before him in answering the last question, nor one or more immediately preceding.

Cross-Q. 159. You have been referring to the water bath shown in Fig. 1 of the patent, have you not?

A. I have been looking at both drawings of the patent, Figs. 1 and 2; I consider they refer to the same lamp.

Cross-Q. 160. Please examine the drawing, Fig. 1, in the
105 Allen patent, and state why you consider that the water bath is closed and not open—not accessible to the air.

Counsel for complainant objects to the question, as it limits the witness to the drawing only, and does not allow him to examine the specification; also on the ground that the witness does not pretend to understand the said specification, as it is perfectly clear from the last answer that he does not.

Counsel for defendant reserves his answer to the above statement until after this line of cross-examination is concluded.

A. It looks so from the two views shown here, and the drawing on Fig. 1 looks as though it was housed.

Cross-Q. 161. What do you mean by the expression housed?

A. Closed in.

Cross-Q. 162. In cross-Q. 150 you were asked if you had read and examined the specification and drawings of the said Allen patent, and you said yes. Do you understand said specification and drawings?

(The same objection.)

A. Probably I don't understand them thoroughly; I don't pretend to.

Cross-Q. 163. Do you fail to understand them for the reason that you are not enough of an expert to read the specification of the patent and examine the drawings, and thereby understand the same?

(Objected to as not cross-examination, as counsel does not state what he means by expert, and also as immaterial, and also as the witness has not said that he failed to understand them, only that he does not know whether he understands them.)

A. I read them over and understand them, probably, my way; they may not be correct, probably—my version of them.

Cross-Q. 164. How is it that you are so confident that you
106 understand the Hutchins patent, No. 177,334, and that you have so little confidence that you correctly understand the Allen patent, No. 50087—the Allen patent is much the shorter of the two; the drawings are less complicated?

(Objected to.)

1st. Because the witness has not said that he was confident that he understands the Hutchins Patent, No. 177,334, but has only given his understanding of the patent for whatever it is worth.

2d. As improperly asserting that the Allen drawing is less complicated, which, if a fact, should first be proven and not asserted by counsel.

3d. As immaterial and seeking to draw a most ridiculous parallel on the supposition that if a man understands one thing he therefore necessarily understands every other; if he understands one book or patent he necessarily understands every other book or every other patent, which is absurd; also as not cross-examination.

Counsel for defendant reserves his answer to the above statement until after this line of cross-examination is concluded.

A. If I understand the Hutchins patent better it is because I have looked at it a little more.

Cross-Q. 105. Question repeated.

(The same objection, and as fully answered.)

A. My last answer to it is the best I can give.

Counsel for defendants offers in evidence a certified copy of the U. S. letters patent granted John Allen September 26, 1865, No. 50087, for improvement in keeping oil cool in lamps or burners, and the same is marked Defendant's Exhibit Allen Water Bath Patent, J. A. S., examiner, February 11, 1882.

107 The introduction of said patent in evidence at this stage of the proceeding is objected to by counsel for complainant as incompetent and not properly cross-examination.

Cross-Q. 166. You declined to answer cross-Q. 70, and have been ordered by the court so to do; I now repeat cross-Q. 70 and desire you to answer the same, and, in order that you may clearly understand it, I request the examiner to read over to you cross-Q. 69, your answer thereto, and cross-Q. 70.

(Objected to as utterly immaterial, and as not cross-examination, and as calling for hearsay.)

A. I think it was, but I am not positive.

Cross-Q. 167. The firm of C. Reissner & Co. were well known at that time and for some time before as the manufacturers of a coal-oil stove, known as the Summer Queen, were they not?

(Objected to as not cross-examination, and as it does not appear that the firm of C. Reissner & Co. inquired about were the same as in this suit or composed of the same members, and as hearsay.)

A. Not as I know of.

Cross-Q. 168. Did not you know that the firm of C. Reissner & Co. manufactured a stove called the Summer Queen?

(The same objection, and as already answered.)

A. Yes.

Cross-Q. 169. When did you first know it?

(Objected to as already answered.)

A. Somewhere about the time when they were sued on the Fish patent, I believe.

Cross-Q 170. You heretofore declined to answer cross-Q. 92, and were ordered to do so by the court; I now repeat cross-Q. 92.

108

(Objected to as not cross-examination and as entirely immaterial.)

A. Yes.

Cross-Q. 171. The stoves referred to were like Defendant's Exhibit Sharp Stove, were they not?

(The same objection.)

A. Yes.

Counsel for defendants here discovers that two exhibits for two different stoves have both been marked so nearly alike as to make probable confusion. The older style of complainant's goods is marked Defendant's Exhibit Sharp Stove, J. A. S., examiner, January 5, 1882. The more recent style of complainant's goods is marked Defendant's Exhibit Sharp's Stove, J. A. S., examiner, January 5, 1882.

The two exhibits can be distinguished by the fact that the older style of stove has the words Exhibit Gem No. 2 on the back of the tag attached thereto, on which the exhibit mark is written.

It is understood that cross-Q. 171 referred to the stove with the words Exhibit Gem No. 2 on the back of the tag.

Cross-Q. 172. When you made the change from the older to the more recent style of goods, as shown in the two exhibits last referred to, were you aware of the existence of the Hutchins patent?

(Objected to as already answered.)

A. Not when I first made the change.

Cross-Q. 173. Was the making of the change an idea of your own?

(Objected to as immaterial.)

109

A. Yes, sir.

Cross-Q. 174. Were you at that time aware of any one else having made a stove such as your new style of stove?

(The same objection.)

A. No.

Cross-Q. 175. Why did you not patent the improvement?

(The same objection, and as not cross-examination.)

A. I don't know; I make a good many improvements that I don't get patented

Cross-Q. 176. Is that the best answer you can make to the last question?

(The same objection, and as already answered.)

A. Yes; I think I have answered it.

Cross-Q. 177. When did you first begin to make stoves like the exhibit Defendant's Exhibit Sharp Stove (on reversed side of tag Exhibit Gem No. 2)?

(Objected to as already answered and as immaterial.)

A. Some five or six years ago.

Cross-Q. 178. Had you not prior to that made a stove like the last-mentioned one, except that the water bath rested directly on the oil-holder?

(The same objection.)

A. Yes.

Cross-Q. 179. For how many years prior did you make that kind of stove, with the water bath resting directly on the oil-holder?

(The same objection.)

A. I don't remember; I think it is one or two years; I can't remember exactly now when I did make the change.

110 Cross-Q. 180. Do you remember a Summer Queen stove like the Exhibit Reissner Stove, except that the support of the cylinder was like the struts in Defendant's Exhibit Sharp Stove (Exhibit Gem No. 2)?

(The same objection and as calling for hearsay.)

A. I think I have seen their Summer Queen stove with the struts on the same as that exhibit; that is the way they used to make them, I believe.

Adjourned to Wednesday, February 15, 1882, at 10 a. m.

NEW YORK, *February* 15, 1882—10 o'clock a. m.

Met pursuant to adjournment.

Present: Mr. A. V. Briesen, for complainant, and Mr. W. H. L. Lee, for defendant.

Continuation of the cross-examination of JAMES L. SHARP:

Cross-Q. 181: You were asked at the conclusion of the last session whether you remembered a Summer Queen stove like the Exhibit Reissner Stove, except that the support of the cylinder was like the struts in Defendant's Exhibit Sharp Stove (Exhibit Gem No. 2), and you answered that you had seen the Summer Queen stove with struts on; please look at the stove I now show you, and state whether it is not a sample of the Summer Queen stove as formerly made.

(Same objections.)

A. That looks like the sample of the Summer Queen stove.

Cross-Q. 182. Have you any doubt on the subject?

(Same objection.)

111 A. I don't think I have; no, sir.

Counsel for defendant offers in evidence the stove last referred to, and the same is marked Defendant's Exhibit Reissner Stove, Old Style, J. A. S., Ex'r, February 15, 1882.

(The introduction of said stove is objected to as utterly immaterial and not a part of the cross-examination.)

Cross-Q. 183. Have you ever known of any style of Summer Queen stoves, besides the two already offered in evidence and marked Complainant's Exhibit Reissner Stove and Defendants' Exhibit Reissner Stove, Old Style?

(Same objection as to question 182.)

A. I have no recollection now but of those two styles.

Cross-Q. 184. Will you please look upon the drawings annexed to letters patent No. 156,149, and state whether said drawings do not show a coal-oil stove like Defendants' Exhibit Reissner Stove, Old Style?

(Same objection, and counsel for the complainant submits that there seems to be a studied endeavor on the part of the defense to confuse the exhibits by marking them substantially alike.)

Counsel for defendant states that he is willing to have the exhibit marks changed in any way that complainant's counsel may suggest, as tending to prevent confusion of exhibits.

A. It don't show exactly the same stove, but a similar one; it has a different top, and has no door, but only a mica frame.

Cross-Q. 185. Do you consider that the difference in the top is a substantial one?

(Objected to on the ground that the question does not state in what respect the difference is or is not substantial whether with reference to a patent that claims the peculiar construction of door, or with reference to a patent claiming the peculiar construction of top or what.)

112 Counsel for defendant reserves his answer to the above statement until this line of cross-examination is concluded.

A. The top on the exhibit is considered more of an improvement than the one shown in the drawing.

Cross-Q. 186. In what does the improvement consist?

(Objected to as not cross-examination and utterly immaterial; counsel for complainant repeats his notice that the witness is no longer regarded as complainant's witness with reference to this preposterous line of cross-examination.)

A. Well, the exhibit shows a better style of top, and is more easily and cheaply assembled together with the other parts of the stove.

Cross-Q. 187. Do you claim that this exhibit Defendants' Exhibit Reissner Stove, Old Style, is an infringement of your letters patent No. 177,334?

(Objected to as not cross-examination.)

A. I don't know as I do.

Cross-Q. 188. Do you or do you not?

A. No, I don't, as it is now.

Cross-Q. 189. The water pan in the Exhibit Reissner Stove and in the Exhibit Reissner Stove, Old Style, are the same, are they not?

(Objected to as not cross-examination, and as the exhibits speak for themselves, and counsel for defendant should explain what he means by "the same.")

A. The water pans are very similar; are alike as far as the water baths are concerned.

Cross-Q. 190. In the two exhibits last referred to the heating cylinders are hinged in the same manner, are they not?

(Same objection.)

113 A. No; they are not.

Cross-Q. 191. Please point out all the differences that you see.

It is understood that all questions that have been put to this witness, and all questions that may be put to him, in which matters are enquired of that do not touch a comparison between Exhibit Reissner Stove and complainant's patent, are objected to as not proper cross-examination, and a separate objection to every such question is no longer required.

A. The difference in the new style shown of the Summer Queen, I mean Exhibit Reissner Stove, the top is hinged to the top plate that supports the heating chamber, which is not shown in the Exhibit Reissner Stove, Old Style.

Cross-Q. 192. The hinging contrivances in both stoves are very ordinary and common modes of hinging, are they not; I refer to the hinges, not to the places or parts on which the hinges rest?

A. Well, the hinging on the Exhibit Reissner Stove, Old Style, is quite a common way of hinging, and there is nothing new about it; but the hinging on the Reissner new style of stove is a new mode and an improved way of hinging.

Cross-Q. 193. In what does the improvement consist?

A. It consists of hinging to the top plate that supports the heating chamber and the top of the stove the whole cylinder.

Cross-Q. 194. The improvement, then, consists in the place where the hinging is located; is that correct?

(Objected to as assuming what the witness has not said.)

A. No; it is not wholly the hinge which is the improvement, but in combination with the top plate that supports the heating chamber.

Cross-Q. 195. Apart from the fact that it is combined with the top plate, is there any improvement in the hinge?

A. Well, there may be no particular improvement in the hinging, but in the manner in which the parts can be assembled together, which is considered an improvement.

Cross-Q. 196. Now, is this then a correct statement of your improvement, that it relates to the manner of supporting the
114 base rim or ring on which the chimney rests by struts from the wall of the water chamber, whereby the weight of the chimney and cooking utensil placed thereon is removed from the bottom of the water chamber and thrown against the wall, thus rendering the construction of that part of the stove more durable; and do you claim that the Exhibit Reissner Stove contains this, and that the Exhibit Reissner Stove, Old Style, does not?

A. Yes; I claim that a stove with a top plate supported on the outer edge of the water pan is a decided improvement over a stove like Exhibit Reissner's Old Style Stove; such plate is not shown in Exhibit Reissner's Old Style Stove; in Exhibit Reissner's Stove such plate is shown.

Cross-Q. 197. Has not the Exhibit Reissner's Stove, Old Style, all the other elements of the combination described in the Hutchins patent No. 137,334, and claimed in the first claim, except the perforated top plate A^1, according to the construction you have given to it?

A. No, it isn't.

Cross-Q. 198. Has it not the water vessel A?

A. Yes, it's got a water vessel.

Cross-Q. 199. Has it not a hot-air cylinder, C?

A. Yes.

Cross-Q. 200. Has it not a top perforated plate, L?

A. Yes, it's got a top perforated plate, L.

Cross-Q. 201. If you took this Exhibit Reissner Stove, Old Style, removed the ring which supports the cylinder, and the struts which support this ring and which rest in the bottom of the water pan, and substitute for such removed parts the ring on which the cylinder rests in Exhibit Reissner Stove, together with the struts extending from said ring to the outer wall of the water pan, would not the hinging of the cylinder be a very obvious thing to any skilled workman?

(Objected to as asking the witness to assume the functions of the court and as argumentative.)

A. Well, if I should remove the ring which supports the heating chamber in Exhibit Reissner's Old Style Stove and substitute the top plate which is shown in Exhibit Reissner's Stove it would
115 make a stove exactly like the one Exhibit Reissner's Stove; and the hinging of it there is the most practical way of doing it; I do not know what you mean by obvious.

Cross-Q. 202. You have stated that the hinging of it is, then, the most practical way of doing it; is it the way of hinging it which

would naturally suggest itself to a skilled workman as the most convenient?

(Same objection; it does not appear that the witness knows what would appear to a skilled workman.)

A. Some skilled workmen might hit on it the first time, and others might be a long time before they would discover it.

Cross-Q. 203. Please describe the hinge which is shown in the Hutchins patent No. 177,334, and state whether it is an ordinary hinge; and, if not, describe its peculiarities.

A. It is a hinge—ordinary hinge for such kind of work.

Cross-Q. 204. Please look upon Exhibit Reissner Stove and state whether, under your construction of the patent, it is true that the struts may be of any required number or form, secured to the wall of the water chamber placed inclinedly inward and fastened to the rim or ring on which the chimney rests to support said rim or ring fixedly over the wick tubes. By the word "struts" I mean the three struts shown in the exhibit which extend from the supporting ring to the outer circumference of the water pan.

(Objected to on the ground that a construction is referred to of which counsel gives no illustration, whether he means as many as 500,000 struts when he says any number, or only one strut; whether he means inclined downwards, and, if so, how far downwards does not appear; hence the witness does not receive a clear statement of what counsel has in his mind.)

Counsel for defendants reserves his answer to the foregoing statement until this line of cross-examination is concluded.

A. Yes; the plate shown in Exhibit Reissner Stove, which supports the heating chamber and the top, could be made with
116 more openings than what is shown in this, and work equally as well. By openings I mean that there could be more openings here (pointing to the exhibit) in the plate which supports the heating chamber between the centre ring and the outer edge of the water pan and answer as well; this plate, as is shown in Exhibit Reissner's Stove, could be made of a different form; it could be raised or flat and probably would answer the same purpose.

Cross-Q. 205. Then the principal advantage in the form of structure shown in Exhibit Reissner Stove is this, is it not; that the weight of the chimney, and of any utensil placed thereon, is thus thrown outwardly, against the wall of the water chamber, and the pressure of such weight removed from the bottom of the water chamber, thereby rendering that part of the stove more durable; is this correct?

A. Yes; it is more durable, of course, and it brings the support of the heating chamber to bear more evenly, by bringing the plate out to the outer edge, which supports the chamber on the outer edge of the water pan.

Cross-Q. 206. Do you consider this advantage of importance?

A. I believe it of great importance over the old style.

Cross-Q. 207. Is there any other advantage in the construction shown in Exhibit Reissner Stove over that shown in Exhibit Reissner Stove, Old Style?

A. Yes.

Cross-Q. 208. What is it?

A. Well.

Counsel for defendants desires to say that the witness began to say, "I don't know that there is," when complainant's counsel pointed with his finger to the bottom of the water pan in Exhibit Reissner Stove, Old Style, and tapped it once or twice with his finger, having previously thrown back the cylinder upon its hinge, and requests the examiner so to testify.

Complainant's counsel says that he did touch Exhibit Reissner Stove, Old Style, with his fingers, and does not think that that fact is necessarily of record, and asks the examiner to certify that during the examination defendants' counsel also touched the exhibits with his fingers, frequently.

117 Counsel for complainant denies that the witness said "I don't know that there is," his recollection being that the witness said, "Well, I don't know, and" was then stopped by counsel for defendant.

The examiner's clerk certifies that he saw the complainant's counsel place his fingers on the top of the wick tube of the Exhibit Reissner Stove, Old Style, just as the witness was about to answer, but that the complainant's counsel is correct as to what was said by the witness.

A. Well, I commenced to tell you, when you stopped me and wouldn't let me go on; the centre ring in Exhibit Reissner's Stove that supports the heating chamber don't show any legs resting down in the water, which is objectionable, as is shown in Exhibit Reissner Stove, Old Style. I was going to tell you that when you stopped me; it is objectionable, because they bring all the heft of the supporting cylinder, heating chamber, to bear right on the centre of the stove, on the water pan; then they are liable to rust out and soon become useless.

Cross-Q. 209. In answer to a question as to whether you claimed that the Defendants' Exhibit Reissner Stove, Old Style, was an infringement of your letters patent No. 177,334 you said, "No, I don't, as it is now;" what do you mean by that expression?

A. Well; I mean as it is shown in its present form.

Cross-Q. 210. Do you mean the present form of the patent or the present form of the exhibit?

A. I mean the present form of Exhibit Reissner's Stove, Old Style.

Cross-Q. 211. Reference has been made on this examination to the suit of Reissner and others *vs.* Sharp, brought against you for the infringement of the reissue No. 7751; a motion for preliminary injunction in that suit was decided in your favor, was it not, on the ground that the invention therein described was patented and described in a Canadian patent, which was granted to said John A.

Frey prior to the obtaining of his original letters patent in
118 the United States, which said Canada patent, the court held, had caused the United States patent to expire?

(Objected to, as the record of the suit will be the best evidence, and also as immaterial.)

A. I believe there was, sir.

Recess till 2 p. m.

2 O'CLOCK P. M.

Counsel present as before.

Cross-Q. 212. Reference has been made to certain testimony given by you in the case of Reissner *vs.* Sharp, and certain extracts therefrom have been quoted on the record: was such testimony true at the time you gave it?

A. I presume it was; yes, sir.

Cross-Q. 213. Have you any doubt of it?

A. The testimony I gave was true.

Counsel for defendants calls the attention of the court to the fact that the Defendants' Exhibit Reissner Stove, Old Style, was heretofore offered in evidence in the suit of Reissner *vs.* Sharp, and now bears a tag with the mark "Reissner *vs.* Sharp, Defendants' Exhibit No. 2, Sept. 30, 1878, J. M. D., ex'r."

Cross-Q. 214. In Defendants' Exhibit Reissner Stove, Old Style, and in Defendants' Exhibit Sharp Stove (Exhibit Gem, No. 2), is there not a free circulation of air above the water pan, so as to furnish air to the openings in the diaphragm at the wick tubes?

A. Yes.

Cross-Q. 215. In this respect is there any improvement in the Exhibit Reissner Stove?

A. Not any to my knowledge.

119 Cross-Q. 216. John A. Frey was at the time that the suit of Reissner *vs.* Sharp, before referred to, was brought a member of the firm of C. Reissner & Co., was he not?

A. Not to my knowledge, he was not; he was so reported I believe.

Cross-Q. 217. Have you any reason to doubt that he was?

A. I don't know as I have any particular reason to doubt it; I don't know but he was, but I couldn't swear he was.

Cross-Q. 218. Is it not a fact that you are sure of from your knowledge of the trade and of the various firms dealing in coal-oil stoves in the city of New York?

A. I know of the most of the firms dealing in coal-oil stoves, but I don't know who the firms are composed, nor how many members there are in each firm, either.

Counsel for defendants offers in evidence the bill of complaint in the suit of the Kerosene Lamp Heater Company against James L. Sharp and Gilbert G. Wood, brought for infringement of reissue No. 7069, known as the Fish patent, and bearing file-mark May 11, 1876, being the bill of complaint in the suit hereinbefore referred to, the answer in which has been already offered in evidence; also the bill

of complaint in the suit of the Kerosene Lamp Heater Company *vs.* Christoph Reissner, Adam Reissner, and John A. Frey, copartners, composing the firm of C. Reissner & Co., doing business at No. 242 Pearl street, in the city of New York, brought for infringement of reissue No. 7069, known as the Fish patent, and bearing file mark May 11, 1876; both of the said bills of complaint are on file in the circuit court of the United States in the southern district of New York.

The introduction of both said papers objected to as altogether immaterial to any issue in the case; also as they are not properly offered at this stage of the proceedings.

Counsel for defendant also offers in evidence an exemplified copy of Canada patent of invention, granted to James Henry Thorp, upon the invention of John Augustus Frey, which is called or known by the title or names of the "Summer Queen Improved Coal Oil Stove," dated May 15, 1873, together with the certificates thereto an-
120 nexed, or thereupon, and the same is marked Defendants' Exhibit Frey Canada Summer Queen Patent, J. A. S., examiner, Feb. 15, 1882.

Counsel for complainant objects to the introduction of said paper in evidence on the following grounds, to wit: 1. That it is not mentioned in the defendant's answer as an alleged prior patent, of which notice should have been given to the complainant. 2. That it is not duly certified or exemplified by the Commissioner of Patents, as required by the laws of the United States in such cases. 3. That it is not material to any issue in this case. 4. That it is not properly offered in evidence at this stage of the proceedings.

Counsel for defendant offers in evidence the opinion of Judge Blatchford in his decision of the motion for an injunction in the suit of Reissner *vs.* Sharp, heretofore referred to, which said opinion is on file in the office of the clerk of this court, and is reported in the 16th of Blatchford's Circuit Court Reports, at pages 383 to 396, inclusive.

(Objected to on the same grounds as cited in the last preceding offer.)

Counsel for defendant offers in evidence the original bill of complaint in said last-mentioned suit brought by Christoph Reissner, Adam Reissner, and John A. Frey against James L. Sharp for infringement of reissue No. 7751, and bearing file-mark July 7, 1877.

(Objected to as incompetent and immaterial.)

Cross-Q. 219. Please look upon Defendant's Exhibit Sharp's Stove, and state whether, in your opinion, it embodies the invention described in letters patent No. 177,334 and claimed in the first claim, bearing in mind the fact that in this exhibit the water-bath contains perforations in the bottom of the water-pan and perforations in the wall thereof, such as would prevent water being held in the water bath.

A. Well, as far as the first claim goes, it has the top plate, cylinder —heating cylinder, cone, plate, centre ring, which is all shown in the other patent—Hutchins' patent.

121 Cross-Q. 220. Then you do not consider the water bath as an essential element of the first claim of the Hutchins patent; is that correct?

(Objected to as assuming what the witness has not said.)

Counsel for defendant reserves his answer to the above statement until this line of cross-examination is concluded.

A. Well, I didn't say whether it was or not; it is considered quite important; by some folks to be very important.

Cross-Q. 221. Will you please state whether or not, in your opinion, the water bath is or is not an essential element of the first claim of the Hutchins patent No. 177,334?

A. Yes; I think it is quite an important feature of it.

Cross-Q. 222. Then please explain why you consider that Defendant's Exhibit "Sharp's Stove" contains the invention claimed in the first claim of said Hutchins' patent, when in your answer to cross-question 219 you do not state that said exhibit has the water bath.

A. Because it has all the elements of the other stove without a precise style of water bath.

Cross-Q. 223. Has the exhibit mentioned in the last question any part which can be used as a water bath in its present condition?

(Objected to as substantially like cross-question 88, which the witness declined to answer, and which the court did not require him to answer; and the witness is instructed not to answer the question if by answering it he would expose his business secrets or an invention not yet patented.)

Counsel for defendant states that he will be perfectly satisfied with an answer which does not in any manner expose the plaintiff's business secrets or an invention not yet patented.

A. That is a matter which I don't care to explain.

Cross-Q. 224. Why will you not explain it?

(Objected to as already answered in answer to cross-question 89.)

122 A. Because it's a private affair in my own business; that's the reason I don't want to explain it.

Counsel for defendant offers in evidence the original subpœna in the suit of the Kerosene Lamp Heater Company *vs.* James L. Sharp and Gilbert G. Wood, in the suit heretofore referred to, together with proof [of] service thereof, on file in this court, and bearing file-mark May 18, 1876; also the notice of appearance of defendant in said suit, on file in this court, and bearing file-mark May 26, 1876.

(Objected to as immaterial and incompetent.)

Cross-Q. 225. In your answer to cross-question 222 you stated that the exhibit referred to in the question has all the elements of the other stove without a precise style of water bath. Do you mean to say that the exhibit referred to has any water bath whatever?

(Same objection as to cross-questions 223 and 224, and also as

already covered by the answer of this witness to cross-question No. 90.)

A. Some folks might consider it a water bath.

Cross-Q. 226. What is your opinion on the subject?

(Same objection.)

A. Well, I don't care to explain it because it is one of those points which I have objected to before on account of business privacy.

Cross-Q. 227. Do you decline to answer?

(Same objection, and as already answered.)

A. Yes; on those grounds I do, as I've stated before.

Counsel for defendant states that in moving for an attachment against the witness, as he remembers the motion papers, no reference was made to the refusal to answer cross-question 88, for the reason that the point which he especially wished the witness to an-
123 swer was then satisfactorily answered in the answer to cross-question 90; but he now gives notice that on account of the refusal of the witness to answer cross-questions 223 and 226 he will move for an attachment against the witness and for an order compelling the witness to answer the same before the Honorable Samuel Blatchford, circuit judge, at the court-room of this court, in the city of New York, on Friday, 24th day of February, 1882, at 11 o'clock a. m., or as soon thereafter as counsel can be heard; such other and further relief as may be just and proper will also be applied for at the same time. Such motion will be based upon the file papers herein and upon the record taken before the examiner.

Adjourned till Monday, February 20, 1882, at 10.30 a. m.

124 NEW YORK, *February* 20, 1882—10.30 o'clock a. m.

Met pursuant to adjournment.

Present: Mr. A. V. Briesen, of counsel for compl't, and Mr. W. H. L. Lee, of counsel for def't.

Further cross-examination of the witness, James L. Sharp, is adjourned to Tuesday, February 28, 1882, at 11 o'clock a. m.

NEW YORK, *February* 28, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

It is consented that complainant's time to take testimony be extended one week from the 1st of March, 1882.

Adjourned to Tuesday, March 7, 1882, at 11 o'clock a. m.

NEW YORK, *March* 7, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Adjourned to Tuesday, March 14, 1882, at 11 o'clock a. m.

Complainant's time to take testimony is hereby extended, by consent, to March 15, 1882.

125 NEW YORK, *March* 14, 1882—11 o'clock a. m.

Met pursuant to adjournment.

Present: James Tunk, Esq., for A. V. Briesen, Esq., of counsel for compl't, and Wm. H. L. Lee, Esq., of counsel for def't.

The cross-examination of Mr. James L. Sharp continued by Wm. H. L. Lee, Esq.

Adjourned to Wednesday, March 15, 1882, at 10.30 a. m.

NEW YORK, *March* 15, 1882—10.30 o'clock a. m.

Met pursuant to adjournment.

Present: Mr. A. V. Briesen, of counsel for compl't, and Mr. W. H. L. Lee, of counsel for def't.

Continuation of the cross-examination of Mr. James L. Sharp.

Cross-Q. 228. In the Hutchins patent and in the various exhibits which contain a water bath or water pan, is not the object of the water bath or water pan to keep the oil cool by interposing a layer of water between the main body of the oil, in the oil holder, and the flame?

A. That, I believe, is the object of the water; yes, sir.

Cross-Q. 229. The terms water bath and water pan are used interchangeably, are they not?

A. I suppose they are; I don't know for certain.

126 Cross-Q. 230. They are used interchangeably in ordinary conversation on the subject between dealers, are they not?

A. I presume they are; yes.

Cross-Q. 231. That is, they are as far as you know?

A. As far as I know, they are.

Cross-Q. 232. Is it not a fact, within your knowledge, that the Hutchins stove, substantially as shown in the patent, was in public use and on sale as early as August or September, 1873?

A. No, sir; it is not.

Cross-Q. 233. State whether the Hutchins stove, like that shown in complainant's patent, was first made, according to your best knowledge, information, and belief.

A. It was somewhere along '78 or '79, as I can remember.

Cross-Q. 234. Did not the inventor make one or more such stoves at any earlier date than that?

A. He may; I don't know; I couldn't say.

Cross-Q. 235. Have you no information and belief on the subject?

A. I have no information that I know of.

Cross-Q. 236. I now repeat to you cross-questions 220, 223, 225, and 226, and ask whether you are able to give any better answers than you have already given to such questions?

(The question objected to on the ground that these questions have already been asked, and that a motion made to compel the witness to give other or fuller answers to said questions, made on the part of the defendant, was denied by Judge Blatchford, by order filed

March 18, 1882, and the witness is therefore instructed not to answer the above question.)

A. I suppose the answers I gave are as good as I can give on them.

Counsel for defendant protests against the practical refusal of the witness to answer cross-questions 220, 223, 225, and 226, and gives notice that he shall invoke the action of the court in reference thereto at or before the hearing of this cause.

Counsel for defendant further protests against the statements of complainant's counsel, made in the form of objections, in various parts of the record, and especially to such statements after
127 cross-questions 79, 88, 160, 163, 164, 185, 194, 204, 220, and 223, on the ground that such statements tend to prompt the witness.

JAS. L. SHARP.

Sworn before me.

JOHN A. SHIELDS.
Examiner, &c.

Defendant's time to take testimony is extended to May 1, 1882.
Complainant's *prima facie* case closed.

128 United States Circuit Court, Southern District of New York.
In Equity.

JAMES L. SHARP
vs.
CHRISTOPH REISSNER, ADAM REISSNER, and CHARLES E. MEIER, Doing Business as C. Reissner & Co.

Testimony taken on the part of the complainant, in rebuttal, under and pursuant to the 67th rule of the Supreme Court of the United States, as amended, before John A. Shields, Esq., a standing examiner of said court.

NEW YORK, *October* 26, 1882.

Present: A. V. Briesen, Esq., of counsel for complainant, and B. F. Lee, Esq., of counsel for defendants.

Adjourned to Tuesday, October 31, 1882, at 10 a. m.

NEW YORK, *October* 31, 1882—10 o'clock a. m.

Met pursuant to adjournment.
Present: Sam'l R. Betts, Esq., of counsel for complainant.

Complainant's counsel states that, by letter from defendants' counsel, complainant's time to take testimony has been ex-
129 tended to and including November 13, 1882, with the understanding that the taking of testimony stand over until November 9, 1882.

Adjourned by consent until November 9, 1882, at 10 a. m.

NEW YORK, *November* 9, 1882—10 o'clock a. m.

Met pursuant to adjournment.

Present: A. V. Briesen, Esq., of counsel for complainant, and B. F. Lee, Esq., of counsel for defendants.

Doctor T. O'CONOR SLOANE, a witness produced on the part of the complainant, being duly sworn, deposes and says:

My name is T. O'Conor Sloane; age, 30 years; I reside in Sands Point, Queens county, New York; my place of business is 119 Pearl street, in this city. I am by occupation an engineer and chemist. I have for some time past given attention to the reading and study of mechanical patents and drawings, specifications, and claims, and to the examination of models.

This I have done for the purpose of comparing structures to determine their similiarity or dissimiliarity, and to prepare myself for giving testimony concerning such structures and patents in suits connected therewith.

I have given testimony in a number of such suits.

At the request of complainant's counsel I have read Complainant's Exhibit Patent, being a certified copy of letters patent No. 177,304, dated May 16, 1876, granted to Abner B. Hutchins, of Brooklyn, New York. I believe I understand such patent.

Q. 1. Have you read, and do you understand, what is described and shown in Defendant's Exhibit Frey Canada Summer Queen Patent?

A. I have read said patent, and believe I understand it.

Q. 2. Please look at the model now shown you, which is certified to be a true and correct copy of the model deposited in
130 the Canadian patent office, and relating to said Canadian patent No. 2366, to wit, Defendants' Exhibit Frey Canada Summer Queen Patent, and state how it compares with the structure that is described and shown in said Canadian patent.

(Objected to as incompetent and irrelevant, and all reference to the model named in the question objected to as not competent or relevant evidence.)

A. It shows correctly the structure described and shown in said Canadian patent.

Counsel for complainant offers in evidence said model of the Canadian patent, and the same is marked Complainant's Exhibit Canada Model. J. A. S., examiner. November 9, 1882.

(Objected to as irrelevant, incompetent, and insufficiently proved.)

Q. 3. How does Exhibit Canada Model compare with the invention which is described and shown in the Hutchins patent, Complainant's Exhibit Patent, with reference to the first claim thereof?

A. It differs materially from the structure described and shown in said patent No. 177,334, and claimed particularly in the first clause of the claim thereof, from the fact that the hot-air cylinder of the model is not hinged to the ring supporting it, but is hinged to a strut which is quite independent and separate from said ring.

Q. 4. In what respect is that difference to which you have referred in your last preceding answer an essential difference?

A. It is essential for several reasons. It involves the introduction of a new element of construction, a separate and independent strut to which the hinge is to be fastened. This mode of securing the hinge is a weak one. Its weakness will be made evident when swinging back the hot-air cylinder.

It will be seen that a considerable strain comes upon the strut, having a tendency to break or distort it. If the injury which
131 it is liable to so receive amount only to a bending or distortion, it will prevent the hot-air cylinder from swinging back into its proper place. The upper ring and hot-air cylinder are so related to each other that it is evident that any means to prevent their relative positions or relations from being disturbed is a very essential feature of construction.

(The same objection.)

Q. 5. The strut which carries the hinge in Exhibit Canada Model appears to have an inwardly-extending brace, which rests on the bottom of the water pan. Please state first whether that brace is essential to the Canadian structure, and also whether its use renders the structure open to the same objections to which Mr. Sharpe testifies in answer to cross-Q. 208, when speaking of the old style of ring support that extended into the water. (The answer of Mr. Sharpe to cross-Q. 208 is here shown the witness.)

(The same objection, and as leading.)

A. The Canadian model has such an inwardly-extending brace as you describe. This brace is an essential part of the construction. The same objections as those specified in the answer which you have cited in your question apply, to a certain extent, to this brace, as it brings a strain upon the water pan, near the centre thereof.

Q. 6. Then, resuming, will you please state whether the Canadian patent, No. 2366, shows and describes the invention referred to in Complainants' Exhibit Patent, and particularly pointed out in the first claim thereof?

A. It does not.

Q. 7. Please examine Defendants' Exhibit Mitchell Patent, now shown you, and state whether it shows or describes the invention referred to in the first claim of Complainant's Exhibit Patent.

A. I have examined said patent, and find it does not. It has no water vessel, and the top does not swing on a hinge.

Q. 8. Please examine Defendants' Exhibit Allen Patent, now shown you, and state how it compares with the invention referred to in the first claim of Complainant's Exhibit Patent.

A. It is entirely different, having no hot-air cylinder or other superstructure.

132 Q. 9. Please examine Defendants' Exhibit Billing's Patent, now shown you, and state how it compares with the invention referred to in the first claim of Complainant's Exhibit Patent.

A. The Billings stove differs on account of the absence of a hinged

hot-air cylinder from the structure of the first claim of Complainant's Exhibit Patent.

Q. 10. Please examine Defendants' Exhibit Bowles Patent, now shown you, and state how it compares with the invention referred to in the first claim of Complainant's Exhibit Patent.

A. The Bowles stove differs from the structure of the first claim of Complainant's Exhibit Patent, as it has no hinged hot-air cylinder.

Q. 11. Please examine Defendants' Exhibit Frey Tom Thumb Patent, now shown you, and state how it compares with the invention referred to in the first claim of Complainant's Exhibit Patent.

A. The stove shown and described in this Frey Patent No. 118,358, has no perforated top plate or equivalent thereof, and hence it differs radically from what is shown and described and claimed in the first claim of the Hutchins patent.

Q. 12. Please look at Defendants' Exhibit Frey Original Patent, now shown you, and state how it compares with the structure described in the Canadian patent No. 2366, and in the Canada model, and also how it compares with the invention referred to in the first claim of Complainant's Exhibit Patent.

A. I find what is shown and described in the Canadian patent represented in the Canadian model. The structure of the Frey patent No. 156,159 has its central ring on which the hot-air cylinder rests supported by struts running vertically down from it and resting on the flat top of the oil vessel. The strut supporting the hinge on which the hot-air cylinder turns also rests on the top of the oil vessel. In the Canadian model and patent the struts carrying the central ring extend outwards and rests upon the side walls of the water chamber. This difference, from reasons already alluded to by me, is essential. The structure of the Frey original patent differs from the structure of the first claim of Complainant's Exhibit Patent for the same reason, and also because the hot-air cylinder is not hinged to the central ring.

133 Q. 13. How does Defendants' Exhibit Reissner Stove, Old Style, compare with the invention described in Complainant's Exhibit Patent, and more particularly pointed out in the first claim thereof.

A. It differs essentially; the central ring, on which the hot-air cylinders rests when the stove is in position for use, is supported by struts that reach vertically down and rest upon the top of the oil vessel. The corresponding ring of the structure of the first claim of Complainant's Exhibit Patent is supported by the walls of the water vessel. The hot-air cylinder of the Reissner stove, old style, is hinged to a strut independent of the central ring. In the structure of the first claim of Complainant's Exhibit Patent the hot-air cylinder is hinged directly to the corresponding ring.

The direct examination of this witness is closed, and the further examination of this witness adjourned to Saturday, November 11th, 1882, at 10 a. m., and complainant's time for taking proofs in rebuttal extended to and including November 15th, 1882.

NEW YORK, *November* 11, 1882—10 o'clock a. m.

Met pursuant to adjournment.

Present: Counsel as before.

At the written request of counsel for defendants an adjournment is taken to Tuesday, November 14, 1882, at 10 o'clock a. m.

Adjourned accordingly.

134 NEW YORK, *November 14th*, 1882—10 o'clock a. m.

Met pursuant to adjournment.

Present: A. V. Briesen, Esq., of counsel for complainant, and B. F. Lee, Esq., of counsel for defendants.

The cross-examination of Doctor T. O'CONOR SLOANE, by B. F. LEE, Esq.:

Cross-Q. 14. Please refer to Defendants' Exhibit Allen Water Bath Patent, and state whether the water in that patent is not intended to both surround and cover over the oil tank so that it shall be submerged in water.

A. In the specification the patentee describes two modes of carrying out his invention. One is by maintaining water on top of the oil container; the other is by wholly immersing the oil vessel in a larger vessel of water, substantially as described in your question. In the drawing accompanying the patent No. 50087, Fig. 1 shows the first method of construction, and Fig. 2 the second method.

Cross-Q. 15. Is not the second method spoken of in your last answer the one shown in the Hutchins patent No. 177,334?

A. It differs in one respect, as the oil vessel has no water under it. This is the principal difference as regards the one function of surrounding the oil vessel with water. Other features of invention called for by this construction also appear in the Hutchins patent that are not shown in the Allen patent.

Cross-Q. 16. Referring to your answer to question 6, please state whether the reasons which led you to the conclusion expressed in that answer are stated in the answers previous to that answer?

A. They are.

Cross-Q. 17. Please refer to the Mitchell patent No. 96249 and the Hutchins' Patent No. 177,334, and state whether both
135 do not contain separate chimneys over each wick and deflector or cone?

A. Substantially they have such separate chimneys.

T. O'CONOR SLOANE, *Ph. D.*

Sworn before me—

JOHN A. SHIELDS,
Examiner, &c.

(Complainant rests.)

(Here follows diagram marked p. 136.)

137 Complainant's Exhibit Patent. J. A. S., Ex'r. Dec. 7th 1881.

United States Patent Office.

Abner B. Hutchins, of Brooklyn, New York.

Improvement in Hydrocarbon Stoves.

Specification forming part of letters patent No. 177,334, dated May 16, 1876; application filed October 4, 1875.

To all whom it may concern:

Be it known that I, Abner B. Hutchins, of the city of Brooklyn, in the county of Kings and State of New York, have invented a new and useful improvement in hydrocarbon stoves, and I do hereby declare the following to be the specification of the same.

The object of this invention is to produce a stove which can safely and easily be heated by the combustion of a hydrocarbon or oil in a similar manner to that in common use in illuminating lamps.

The invention consists of the following devices: The vessel or chamber containing the oil or hydrocarbon is submerged in water, so as to always keep the said oil vessel or chamber cool, and thereby free from explosive or other accident. The water-vessel is covered with a perforated metal plate, which forms the base of the hot-air cylinder, on the top of which the culinary or other vessels to be heated are placed. Vertical tubes or flues are placed in the hot-air cylinder in such positions as to act as chimneys for the burners. Mica windows are placed in the sides of these flues or chimneys in such positions as to enable the operator to observe the flame of the burner and to regulate the same as circumstances may require.

The invention will be readily understood by reference to the accompanying drawings, of which—

Figure 1 is partly an elevation and partly a vertical section of the improved stove. Fig. 2 is partly a plan and partly a section of the same. In this view the half of the top plate only is removed, so as to disclose the construction of the hot-air cylinder and the flues or chimneys. Fig. 3 is a sectional plan of the stove, taken just below the top plate of the water chamber, and showing a part of the top plate of the oil vessel or reservoir broken out.

The base of the stove consists of a vessel, A, resting, for convenience, on short legs *a*. This vessel is intended to contain water, and has a top plate, A′, which is preferably made of cast metal, and strong enough to support all the parts of the stove which are above it. This plate A′ is annular in form if the stove is of general cylindrical construction (which is preferable to other forms), the central opening in the said plate being nearly equal in area to the sectional area of the hot-air cylinder C, which rests upon it. Concentrically arranged around this central opening is a series of perforations, a^1, through which atmospheric air passes down into the top part of the vessel A, and thence up through the hot-air cylinder and its chimneys.

The reservoir or vessel B, in which the oil or hydrocarbon is put for use in this stove, is placed within the vessel A, and the bottom of the vessel A may likewise constitute the support for the bottom of the vessel B, and there will be an intervening chamber, B′, between the sides of the vessel B and its inclosing vessel A, and the sides of the vessel A will extend up one or two inches (more or less) above the top of the vessel B. While in use the annular chamber B′ will be filled with water, and water will also cover the top of the vessel B, which said vessel and its contained fluid will thereby be always kept at a low temperature, and accident from the ignition or explosion of the oil or hydrocarbon will thus be rendered impossble by this water covering. A tube, *b*, extends from the vessel B up through one of the perforations or apertures a^1, and serves as a means of filling the vessel B. A suitable screw-cap closes the top end of this tube. A pipe or valve, a^2, leads from the chamber B′ to the outside of A, for the purpose of drawing off the water when it becomes heated, or when the occasion requires it. Water may easily be poured into the vessel A through the apertures a^1.

The wick-tubes D are attached to the top of the vessel B, and the wick used to conduct the oil from B to the flame is operated in the usual manner of illuminating-lamps. The rollers for moving the wicks up and down are inclosed in casings or housings E, and are operated by the thumb-wheels F, the stems *f* of which pass through tubes E′, that are attached tightly to the ends of the housings E, and pass through the side of the vessel A. Care must be taken to have all of the parts of D E E′ that lie within the water-way of A perfectly water-tight, so as to prevent the leakage of the water either into the vessel B or outside of A.

The hot-air cylinder C is preferably built of sheet metal,
138 and is hinged to its base-plate A′ by the hinge *c* at the back side of the stove, so as to permit the top parts of the stove to be tipped back out of the way of trimming the wicks, or for other purposes. A finely-perforated diaphragm, G, covers the central opening of the base-plate A′ below the hot-air cylinder, for the purpose of properly controlling the air-currents that pass up from the chamber of A into the hot-air cylinder. A diaphragm, H, within the hot-air cylinder C, and near its base, is fixed, by riveting or otherwise, to the sides of the said cylinder. Portions of this diaphragm are formed into conical flame-caps *h*, for controlling and confining the flame within its proper limits in a manner similar to that in common use in illuminating-lamps.

Above the diaphragms H tubes or chimneys I confine the hot gases and products of combustion from the flames of the burners within proper limits for the efficient action of the burners. These tubes or chimneys I extend from the diaphragm H to the top of the hot-air cylinder, and are preferably made of sheet metal. The shell of the hot-air cylinder C forms one side of each of these chimneys, and in this side, which is common to both the cylinder and the chimney, a small mica window, K, is placed, so as to enable the operator, from without, to see and regulate the flame of the burners by turning the thumb-wheel F, as required. For simplicity of construction I cut

apertures in the side of the hot-air cylinder, suitable for the windows K, and through these apertures portions of the metal of the chimney-plates are extended, which said portions are bent over in the form of grooves *k*, as in Figs. 1 and 2, for the reception of the mica plates that are to form the windows.

The top of the hot-air clyinder is covered with a cast-metal plate, L, that serves as a rest for whatever vessel is to be heated on this stove. The plate L is perforated with apertures over the chimneys, and also over the hot-wells of the cylinder C, as well as in the portions lying outside of the cylinder, thus permitting all of the heat generated to reach the vessel on top of the plate L, and thereby be utilized. The intense heat imparted to the plates of the chimneys I and plate L, and reflected thence back upon the hot gases passing through and about these parts, will be quite sufficient to consume all of the smoke, and there will, in consequence, be no emission of unpleasant odors from imperfect combustion. The top surface of the plate L is provided with ridges *l*, that keep the vessels placed thereon from obstructing the openings in the said plate.

Having described my invention, I claim—

1. The water-vessel A, with its perforated top plate A′ and hot-air cylinder C, hinged at *c* to plate A′, and top perforated plate L, all arranged and connected together substantially as and for the purpose set forth.

2. The chimneys I, having one of their sides formed by the hot-air cylinder C, to which they are connected by the groove-clips *k*, that also receive the mica windows K, as and for the purpose set forth.

ABNER B. HUTCHINS.

Witnesses:
J. H. COLTON.
M. RANDOLPH.

139 *Testimony Taken on Part of the Defendants, Under and Pursuant to the 67th Rule of the Supreme Court of the United States as Amended, before John A. Shields, Esq., a Standing Examiner of said Court.*

Circuit Court of the United States, Southern District of New York.
In Equity.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER & CHARLES E. MEIER, Impleaded.

NEW YORK, *October 11th*, 1882—2 p. m.

Met pursuant to notice.

Present: B. F. Lee, counsel for defendants; James Turk, for Briesen & Betts, counsel for complainant.

140 Counsel for complainant enters his objection to the taking of these proofs as being irrelevant, the defendants' time for taking proofs having expired May 1, 1882, and no proper extension

having been granted by the court, counsel for complainant only appears for the purpose of making the aforegoing objection and such other objection as he may see fit to make.

Counsel for defendant- offers in evidence certified copy of
141 letters patent of Canada, No. 2366, granted to James Henry Thorp, assignee of John Augustus Frey, dated May 15, 1873, for the Summer Queen improved oil stove, with the specification and drawing thereof, and the same is marked Defendants' Exhibit Frey, Canada, Summer Queen Patent. J. A. S., Ex., Oct. 11, 1882.

Also a certified copy of U. S. letters patent granted to Robert B. Mitchell, October 26, 1869, No. 96249, and the same is marked Defendants' Exhibit Mitchell Patent. J. A. S. Ex., Oct. 11, 1882.

Also a certified copy of U. S. letters patent granted to John Allen, M. D., September 26, 1865, No. 50087, and the same has already been marked Defendants' Exhibit Allen Water Bath Patent. J. A. S., examiner, February 11, 1882.

Also a certified copy of U. S. letters patent granted to William B. Billings, dated November 14, 1865, No. 50892, and the same has already been marked Defendants' Exhibit Billings Water Bath Patent. J. A. S., examiner, February 9, 1882.

Also a certified copy of U. S. letters patent granted to Bowles & Bard, dated February 7, 1871, No. 111,512, and the same has already been marked Defendants' Exhibit Bowles Patent. J. A. S., examiner, January 5, 1882.

Also a certified copy of U. S. letters patent granted to Frey, Marks & Walker, dated August 22, 1871, No. 118,358, and the same is marked Defendants' Exhibit Frey Tom Thumb Patent. J. A. S., examiner, October 11, 1882.

Also certified copy of U. S. letters patent granted to John
142 A. Frey October 20, 1874, No. 156,149, and the same has already been marked Defendants' Exhibit Frey Original Patent. J. A. S., examiner, January 5, 1882.

Also certified copy of the file wrapper and contents in the matter of the letters patent granted to Abner B. Hutchins May 16, 1876, No. 177,334, and the same is marked Defendants' Exhibit File Wrapper, &c., of Hutchins Patent. J. A. S., examiner, October 11, 1882.

Counsel for defendants also reoffers in evidence all exhibits, documentary or otherwise, already offered in evidence on behalf of defendants during the cross-examination of James L. Sharp or during the complainant's taking of evidence.

Counsel for complainant seasonably objected to Defendants' Exhibit Frey Canada Summer Queen Patent, on the grounds that it is not mentioned in defendants' answer as an alleged prior patent, of which notice should have been given to the complainant, and that it is not material to any issue in this case.

Also to each and every one of defendants' exhibits above offered in evidence as incompetent and immaterial, and as to the last re-offer made by defendants' counsel complainant's counsel repeats his objections to such exhibits which were made when said exhibits were first offered in evidence.

JOHN A. FREY, a witness on behalf of the defendants, being produced and duly sworn, says, being examined by B. F. LEE, Esq.:

Q. 1. What is your name, age, residence, and occupation?

143 A. My name is John A. Frey; my age about 46; and I reside in Montgomery county, State of Maryland; my occupation is that of a farmer.

Q. 2. Have you ever been engaged in any business relating to coal-oil stoves; and, if so, how long?

A. I have been engaged in business relating to coal-oil stoves for a number of years, perhaps more or less so for the last twenty years: part of the time manufacturer and dealer, and also as a patentee.

Q. 3. Look upon Defendants' Exhibit Frey, Canada Summer Queen Patent, dated May 7, 1873, and state whether you are the person named as inventor in said patent.

A. I am.

Q. 4. Have you lately examined, and do you understand, the specification and drawings of said Canada patent?

A. I have lately examined the same and understand it.

Q. 5. Did you ever make or sell any coal-oil stoves constructed like those shown in said Canada patent granted May 15, 1873; and, if so, when first and where?

Objected to by complainant's counsel as immaterial.

A. I have made stoves as shown in said Canada patent, and sold the same in the city of New York in 1872, at the corner of Eighth avenue and Thirty-fifth street, or next door to the corner, and also in Jersey City, in the latter part of 1872 and early part of 1873.

Q. 6. State the circumstances under which you came to cause said Canada patent to be taken out.

A. At that time, in the early part of 1873, I was engaged in the tin business on Pavonia avenue, in Jersey City, and was manufacturing such stoves as are shown in the Canada patent. James H. Thorp, a former acquaintance of mine, came to my place of

144 business and purchased a stove from me; coming there frequently afterwards he purchased more of them, and then asked me at what price I would sell him the privilege of taking out a patent in his name in Canada. I forget the exact amount which he paid me; my impression, however, is that it was about two hundred and fifty dollars, for which I sold him model or models, and signed the necessary papers by which he could obtain a patent in Canada.

Q. 7. You speak of selling him "model or models;" state exactly what you sold him at the time you first took steps to enable him to obtain such Canada patent.

A. I had previously sold him more or less stoves, the exact number I cannot tell, and at that time, when the application was about to be gotten up for obtaining the patent in Canada, I sold him either two or three, one of which he informed me he would use as a model, and the other or others as samples of the same.

Q. 8. State whether these two or three stoves you so sold him were marketable—practical stoves or otherwise.

They were such stoves as I was selling to my customers, and are practical oil stoves.

Q. 9. State where this sale, mentioned in the last answer, to Thorp took place.

A. At my place of business on Pavonia avenue, Jersey City, New Jersey.

Q. 10. Have you examined, and do you understand, the following exhibits in this cause: Complainant's Exhibit Patent, being patent No. 177,334; Defendants' Exhibit Mitchell Patent, Defendants' Exhibit Allen Water Bath Patent, Defendants' Exhibit Billings Water Bath Patent, Defendants' Exhibit Bowles Patent, Defendants' Exhibit Frey Tom Thumb Patent, Defendants' Exhibit Frey Original Patent, Complainant's Exhibit Riessner Stove?

145 A. I have examined the same and practically understand them.

Q. 11. Referring to Complainant's Exhibit Patent, please state in detail the office and operation of the several parts referred to as making up the subject-matter of the first claim of said patent.

Objected to by complainant's counsel on the ground that the witness has not shown himself to be properly qualified to give expert testimony.

A. The water vessel A performs the office, in a measure, of a non-conductor of heat, and also gives a certain amount of evaporation of water in the immediate vicinity of the wick tubes when coming in contact with the same, which, I claim, assists combustion and in a measure deodorizes the products of combustion. The perforated top plate A′ in this stove, to which the cylinder C is hinged, serves to prevent any sudden draft or gust of air from interfering with the flame or causing it to flare up, as in other stoves not so constructed. The hinge on the chimney or cylinder is used as a handy, easy means of turning back the cylinder or chimney for the purpose of trimming or lighting the burner, and affords a ready means of adjusting it back to its proper position after being lit. The top perforated plate L supports any vessel which they may wish to heat. The hot-air cylinder C acts as a chimney, as on an ordinary kerosene lamp, causing the necessary draft to produce combustion, and affords a sufficient amount of space between the vessel to be heated and the flame.

Q. 12. State in what manner the introduction of a hinge, as specified in your last answer, serves, if at all, to affect or modify the operation of the other parts of the structure spoken of in your last answer and enumerated in the first claim of said patent No. 177,334.

Same objection by complainant's counsel.

146 A. It does not affect the other parts at all; the stove would burn the same without the hinge, and would produce the same results.

Q. 13. Please compare said patent No. 177,334, having particular reference to the first claim thereof, with Complainant's Exhibit

Riessner Stove, and state whether the construction referred to in said first claim is substantially the same or substantially different from the construction shown in said Exhibit Riessner Stove.

Same objection by complainant's counsel.

A. It is substantially different in the Riessner stove, and cannot perform the same functions as in the patent No. 177,334.

Q. 14. Please state where, if at all, in said Riessner stove there can be found the "perforated top plate A'" spoken of in said first claim of said patent No. 177,334.

Same objection.

A. I cannot find any such perforated top plate in the Riessner stove.

Q. 15. Please state where, if at all, in said Riessner stove there can be found the "hot-air cylinder C, hinged at *c* to plate A'," spoken of in said first claim of said patent No. 177,334.

Same objection.

A. I cannot find any such plate as A' in patent No. 177,334 in the Riessner stove to hinge the cylinder to.

Q. 16. Please refer in succession to each of the exhibits prior in date to patent No. 177,334, May 16, 1876, and state which of them contains a water vessel.

Same objection.

147 A. The Canada patent contains a water vessel, the Allen patent contains a water vessel, the Billings patent contains a water vessel, the Bowles patent contains a water vessel, the Frey Tom Thumb patent contains a water vessel, the Frey original patent contains a water vessel.

Q. 17. Does the operation of this water bath in each of the patents mentioned in your last answer differ from that of the water vessel in the Hutchins patent, 177,334; and, if so, how?

Same objection.

A. They do somewhat. I find that in the Hutchins patent it is designed to both surround and cover over the oil tank with water, while in the other patents named the water bath is on top of the oil tank, excepting in the Allen patent, which is also designed to surround, as well as cover over, the oil tank; but this does not affect the operation of the stoves, so far as the water bath is concerned.

Q. 18. Please refer in succession to each of the exhibits prior in date to patent No. 177,334, and state which of them contains a hot-air cylinder.

Same objection.

A. The Canada patent, the Mitchell patent, the Bowles patent, the Frey Tom Thumb patent, and the Frey original patent.

Q. 19. Does the operation of this cylinder in said several exhibits

differ from that of the cylinder of the Hutchins patent in any substantial respect?

Same objection.

A. It does not.

Q. 20. Please refer in succession to each of the exhibits
148 prior in date to patent No. 177,334, and state which of them contains a "top perforated plate" in the upper part of the chimney.

Same objection.

A. The Canada patent does, the Mitchell patent does near the top, the Frey original patent does.

Adjourned until Thursday, October 12, 1882, at 9.30 a. m.

NEW YORK, *October* 12, 1882—9.30 a. m.

Met pursuant to adjournment.

Present: Counsel as before.

Q. 21. Please compare your Canada patent with the Exhibit Frey Original Patent, 156,149, and point out any difference there may exist between the two in respect to the supports used to sustain the parts above the water pan.

Same objection as to Q. 11.

A. In the Canada patent the struts or supports are soldered to the wall of the water chamber, while in the Frey original patent they are soldered to the bottom of the water chamber or top of the oil holder.

Q. 22. Which of the two constructions described in your last answer did you first manufacture and sell?

A. The Canada construction.

Q. 23. I observe that in the water pan of the Canada patent the struts rest upon a step in the wall of the water pan. Did all
149 the stoves made and sold by you prior to the date of the Canada patent have that step?

Objected to as leading.

A. They did not.

Q. 24. State particularly where and when you first made them without the step in the wall of the water pan, and where and when you first made them with the step, as shown in the Canada patent, and describe those made without the step.

A. I first made those without the step at my brother's, George A. Frey's, place of busines, 8th avenue and, 35th street, this city, the water bath or pan in shape being made perpendicular, as in the Hutchins patent, and the struts or supports soldered directly on top or on the top edge of the water pan. I also made a double copper stove of the same description, excepting being oblong or oval, which I sold to a lady in Jersey City for some $18 or $20, as near as I can remember. I afterwards adopted a flaring stamped pan for an oil

and water reservoir, as shown in the Canada patent, soldering the struts or supports to the top of such pan, afterwards adding an additional rim to increase the depth of the water thereon or therein contained.

The stamped or flaring pans were used by me in manufacturing oil stoves having the step, as shown in the Canada patent in the latter part of 1872 and early part of 1873, at my then place of business in Jersey City.

The stoves spoken of as being made at my brother's, Geo. A. Frey's, were first made by me in the summer of 1872.

Q. 25. State whether the difference spoken of by you between the structures mentioned in your last answer is a substantial difference or an immaterial one.

A. An immaterial one.

150 Q. 26. Under what name were these stoves sold in 1872?

A. Summer Queen.

Q. 27. Under what name are stoves like Complainant's Exhibit Riessner Stove sold at the present day?

A. Summer Queen.

Q. 28. Compare said Exhibit Riessner Stove with the structures described in your Canada patent and mentioned in your 24th and 25th answers, and particularly take notice of the parts of the structure below the cylinder or chimney and above the oil holder, and state the facts as to the substantial identity or dissimilarity of these structures.

Same objection as to question 11.

A. There is not any difference in the structure of those made by me at that time and the Exhibit Riessner Stove, excepting that cast iron has been substituted for some of the parts wherein I used cheap metal at that time; that, however, does not affect the burning or efficiency of the stove.

Q. 29. About how many stoves constructed as described by you in your last answer had you sold in New York and Jersey City under the name Summer Queen prior to your application for the Canada patent?

A. I cannot exactly name the number; quite a good many; perhaps over 100; possibly 200. I had some manufactured and sold in the city of Troy, New York, in the summer of 1873.

Q. 30. Your Canada patent bears date May 15, 1873, and the specification appears to have been sworn to April 24, 1873, in your estimate of "over 100, possibly 200;" did you include in your last answer any stoves made subsequent to the earlier of said dates?

A. I did not mean by the last answer that I had manufactured and sold possibly 200 previous to the application for the
151 Canada patent, but that I had manufactured at least 100 or more and sold the greater portion of them previous to that date.

Q. 31. Was there any secrecy about these stoves prior to the application for the Canada patent, or how otherwise did you act in relation to them?

A. I did not consider there was any secrecy about them, and I

invited my customers to examine them frequently; had them burning to show the operation, and made such sales as I could of them conveniently.

Q. 32. Referring to Hutchins' patent, No. 177,334, speaking of the top plate A′ and its central opening, the specification says: "Concentrically arranged around this central opening is a series of perforations, a^1, through which atmospheric air passes down into the top part of the vessel A and thence up through the hot-air cylinder and its chimneys." Please examine Complainant's Exhibit Riessner Stove and point out what parts, if any, it contains which are capable of a like mode of operation.

Same objection.

A. I cannot find in the Riessner stove any such like mode of operation.

Q. 33. Suppose that in the Riessner stove the number of struts was multiplied and the spaces between them correspondingly diminished; would it then be capable of a like mode of operation to that enquired of in the last question?

Same objection.

A. It would not.

Q. 34. State your reasons for your last answer.

Same objection.

A. In the Riessner stove the cover rest and its struts or supports are elevated above the water bath, and when in operation the
152 air does not pass down through perforations first into the pan or water bath and then up through the perforated diaphragm as contemplated and spoken of in the Hutchins patent, No. 177,334, and consequently it has not the defense against any sudden gust of air interfering with the flame, frequently causing it to flare up, as the Hutchins patent has.

Q. 35. You have stated that you did not find in Complainant's Exhibit Riessner Stove "the perforated top plate A′" of the Hutchins patent. State whether such exhibit contains any equivalent construction or any parts operating substantially like said perforated top plate A′?

Same objection.

A. It does not.

Q. 35. State whether or not the defendants are your successors in the business of manufacturing coal-oil stoves.

A. They are.

Q. 36. State whether you were ever in partnership with Christoph Riessner in said business; and, if so, state when such partnership ceased and the firm name.

A. I was in partnership with Christoph Riessner from April 1st, 1876, until the 16th of October, I think, 1880, when said copartnership ceased, the firm name being Christoph Riessner & Co.

Q. 37. Are you the person named as the patentee in U. S. patents Nos. 118,358 and 156,149?

A. I am.

Q. 38. Has your experience as a manufacturer and dealer in coal-oil stoves been extensive or on a small scale?

A. It has been extensive.

Q. 39. According to general repute, what firm were the largest manufacturers and dealers in coal-oil stoves while you were a member of said firm of Christoph Riessner & Co.?

A. Our firm was—Christoph Riessner & Co.

153 Q. 40. Please refer in succession to each of the exhibits prior in date to patent No. 177,334, and state which of them contains a hinge arranged and operating as does the hinge in Complainant's Exhibit Riessner Stove and effecting the same objects.

Same objection as to question 11.

A. The Canada patent, the Frey Tom Thumb patent, and the Frey original patent.

Recess of half hour.

All parties present at 1 p. m.

Examination of witness continued:

Counsel for defendants offered in evidence a certified duplicate of the model in the matter of the letters patent granted Abner B. Hutchins May 16, 1876, No. 177,334, and the same is marked Defendants' Exhibit Hutchins Model.

Q. 41. Please examine Exhibit Hutchins Model, and state whether you understand the same, and whether it correctly shows the structure described in patent No. 177,334, about which you have testified.

A. I have examined the model and understand the same, and think it correctly represents the invention claimed in the Hutchins patent No. 177,334.

Direct examination closed.

Counsel for complainant declines to cross-examine the wit-
154 ness, as his evidence is not material to any issue in this case, and as the witness was examined at a period when defendants had no right to further examine witnesses in the case, and gives notice that at the hearing he will move to strike out the testimony taken on the part of the defendants.

Examination resumed by defendants' counsel in view of the objection and statement of complainant's counsel.

Q. 42. How long have you resided at your present place of residence?

Counsel for complainant objects to any further questions being put to the witness, his direct examination having been closed, and there being no cross-examination.

A. Since the 1st of February last, 1882.

Q. 43. Had you previously lived in New York?

A. I had in Brooklyn.

Q. 44. And in what city was your place of business?

A. Keeping a hotel a part of the time in the town of New Lots, Kings county, since dissolving copartnership and retiring from the firm of Christoph Reissner & Co. Previous to dissolving partnership with Christoph Reissner & Co., and during its existence, my place of residence was in the county of Kings, and mostly in the city of Brooklyn, and place of business was at 242 Pearl street (that is the number, I believe) in New York city.

Q. 45. Where did you reside in November, 1881, and in April, 1881?

A. In Brooklyn; my family resided there; I was frequently away on business.

155 Counsel for defendants gives notice that at or before the hearing of this cause he will move to amend the answer by substituting for the words "John A. Frey, of New York, New York, at said New York and other places," the words "John A. Frey, of Brooklyn, New York, at the city of New York, and at Jersey City, New Jersey," said amendment to be made *nunc pro tunc* as of the date of filing the answer; motion to be based on all the proceedings, papers, and evidence in this cause, and reference will also be made on said motion to reissued letters patent No. 7751, for the purpose of showing how counsel came to make an error in preparing said answer.

Such an application will be made before Judge Benedict, at the post office building in this city, at 3 o'clock p. m. to-day, but this designation of time and place will not prevent the defendants from moving at another time and place for the same relief in case the motion cannot then be entertained and disposed of.

Counsel for complainant objects to the notice of motion as insufficient, and gives notice that at the hearing of defendants' motion just noticed he will move to strike out the testimony of this witness taken since the close of his direct examination as being irregular.

JOHN A. FREY.

Sworn to before me on the 11th day of October, 1882.

JOHN A. SHIELDS,
Examiner, &c.

156 Adjourned to 4.15 p. m. to-day, defendants' counsel giving notice that the witness will be in attendance here at that hour for further examination by either party, if desired.

OCTOBER 12, 1882—4.15 p. m.

Present: Counsel as before and the witness, John A. Frey.

Counsel for defendants states that as no judge could be found to hear the motion he would ask complainant's counsel to consent to the amendment of the answer in the manner stated in the notice of motion, especially as the witness is no stranger to any of the parties to this suit. If this request is granted the defendants will rest.

Counsel for complainant consents that the defendants' answer be

amended in the manner set forth in the notice of motion heretofore contained in this record *nunc pro tunc* as of the date of filing the answer, it being understood that the replication and all other proceedings stand as if said answer now on file had been originally filed as now amended.

Counsel for defendants states that he has carefully examined the papers in this case and that he cannot find any apparent ground for any of the objections entered by complainant's counsel; that if there is ground for the same it must arise from some matters not within his knowledge, and he therefore must insist that if any action
157 is to be taken based upon said objections that the same be promptly taken, and before the hearing, so as to enable defendants' counsel to protect the rights of the defendants by some proper motion.

Defendants rest, subject to the above notice and statement.

Circuit Court of the United States for the Southern District of New York.

JAMES L. SHARP, Complainant,
vs.
CHRISTOPH RIESSNER and CHARLES E. MEIER, Impleaded, &c., Defendants.

Testimony taken on behalf of defendants Christoph Riessner and Charles E. Meier, impleaded, &c., in surrebuttal, under order of the court, before John A. Shields, Esq., a standing examiner, &c.

NEW YORK, *December* 18, 1882—2 p. m.

Met pursuant to notice.

Present: James Turk for A. Von Briesen, counsel for complainant, and B. F. Lee, Esq., of counsel for defendants.

Complainant's counsel states that the notice of taking this testimony was not served on him until late in the afternoon of Saturday, the 16th inst., and that both Mr. Briesen and Mr. Betts
158 had prior engagements, which prevented their attendance here to-day, and in view of the shortness of the notice he requests an adjournment until Wednesday, December 20th.

Adjourned to Tuesday, December 19th, 1882, at 2 p. m.

NEW YORK, *December* 19, 1882—2 p. m.

Met pursuant to adjournment.

Present: S. R. Betts, Esq., of Briesen & Betts, of counsel for complainant, and B. F. Lee, Esq., of counsel for defendants.

JOHN A. FREY, a witness on behalf of the defendants, being recalled, being duly sworn, deposes and says as follows:

Q. 1. Have you been heretofore examined as a witness in this cause?

A. Yes, sir.

Q. 2. Have you examined, and do you understand, Complainant's Exhibit Canada Model?

A. I have examined it and am familiar with it.

Q. 3. Will you please examine Defendants' Exhibit Frey Canada Summer Queen Patent, and state whether you understand the same and the subject-matter thereof.

A. I have examined the same and understand it.

Q. 4. Please compare said Complainant's Exhibit Canada Model and said Defendants' Exhibit Frey Canada Sumner Queen Patent, and state whether said model correctly and fully shows what is described in said patent, and give your reasons fully for any statement you can make.

A. I have examined the same and find that it does not em-
159 brace all the features described in the Canada patent. The difference, however, I never deemed as being material. I find that in the Canada patent, "The third part of my invention relates to hinging the chimney to its base ring, or to a strut secured to the wall or bottom of the water chamber, whereby the chimney flues are kept in a proper position over the wick tubes without requiring special adjustment after lighting the wicks." I find that the model does not show the whole of that construction, insomuch as the hinge K is not hinged to the rim or cone support, as I more generally made and sold them at that time. I further quote: "K is a hinge connecting the chimney to a strut, L, secured to the wall of the water chamber, and which strut may be further secured by a brace, M, bearing on the bottom of the water chamber or other convenient arrangement, or the chimney may be hinged to the rim or ring J, as before described," and the usual manner in which I fastened the hinge.

Complainant's counsel objects to the words, "as I more generally made and sold them at that time," and also to the words, "and the usual manner in which I fastened the hinge," in the above answer as incompetent and inadmissible under the order admitting the testimony of this witness.

Q. 5. Can you produce or point out any structure in which the base rim or ring J is supported on struts, and has the chimney hinged to the said rim or ring J, as described in your last answer and in said Canada patent; and, if yea, please point out or produce the same for the purpose of illustration?

Objected to as incompetent, immaterial, and irrelevant, and inad-
missible under the order which this witness testifies, his testi-
160 mony being limited to a comparison between the Canada patent and the Canada model.

A. I can. The Exhibit "Sharp *vs.* Riessner, Complainant's Exhibit Riessner Stove, J. A. S., Ex'r, December 7, 1881," is an exact structure of the Canada patent, excepting that since I made them at that early day cast iron has been substituted for sheet metal for the struts. That difference, however, I consider as immaterial as relating to the invention.

Q. 6. Please refer to said Canada model and explain particularly the difference between it and a structure, such as is described in said Canada patent, in which the hot-air cylinder or chimney is hinged to the ring supporting it as you have described.

Objected to as incompetent under the order under which this witness is testifying.

A. The Canada model shows one of the modes described in the Canada patent for fastening the hinge to the wall of the water chamber and also to its base. The difference between this means of fastening and connecting the brace and strut directly with the rim, J, I consider an immaterial difference, though I generally fastened them in that manner, and not very often as shown in the model.

So much of the above answer as states what the witness considers immaterial and what the witness did objected to as incompetent.

Cross-examination waived.

JOHN A. FREY.

161 At a stated term of the circuit court of the United States for the second circuit and southern district of New York held in the city of New York on the 15th day of December, 1882.

Present: Hon. William J. Wallace, circuit judge.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER and CHARLES E. MEIER, Impleaded, etc.

A motion by defendants, Christoph Riessner and Charles E. Meier, for time to take testimony in surrebuttal herein coming on to be heard, it is ordered that said defendants have to and including December 28th, 1882, in which to take evidence of one witness to show

162 that the model of the Frey Canadian patent offered in evidence by complainant in rebuttal does not correctly and fully show the subject-matter described and shown in said Frey Canadian patent; this cause to keep its place on the calendar, and to be ready for hearing when called in January, 1883.

(S'g'd) WM. J. WALLACE.

(Endorsed:) U.S. circuit court, southern dist. of New York. James L. Sharp *vs.* C. Riessner *et al.* Order allowing defendants to take certain evidence in surrebutal U. S. circuit court. Filed Dec. 18, 1882. Joseph M. Deuel, clerk.

163 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the sixteenth day of January, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable Nathaniel Shipman, judge.

CHRISTOPH RIESSNER *et al. vs.* JAMES L. SHARP.

The above-entitled cause coming on for final hearing upon plead-

ings and proofs, Mr. A. V. Briesen is heard in behalf of the complainants, Mr. B. F. Lee is heard in behalf of the defendant.

C. A. V.

164 U. S. Circuit Court, Southern District of New York. In Equity.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER, ADAM RIESSNER, and CHARLES E. MEIER, Doing Business as C. Riessner & Co.

We hereby consent that Briesen & Steele be substituted as the solicitors for the complainant in the above-entitled case in our place and stead.

New York, 14th Feb'y, 1883.

BRIESEN & BETTS,
Compl't's Solicitors.

Endorsed: U. S. circuit court, south. dist. of N. Y. James L. Sharp *vs.* Christoph Riessner & *al.* Consent and order of substitution. Briesen & Betts, compl't's sol'rs, 229 Broadway, N. Y. U. S. circuit court. Filed Feb'y 16th, 1883. Joseph M. Deuel, clerk.

165 Circuit Court of the United States for the Southern District of New York.

JAMES L. SHARP
v.
CHRISTOPH RIESSNER and Others, under the Firm of C. Riessner & Co.

SHIPMAN, *J.*:

This a bill in equity to restrain the defendants from the alleged infringement of letters patent now owned by the plaintiff, which were issued on May 16th, 1876, to Abner B. Hutchins for an improvement in hydrocarbon stoves.

The invention is said in the specification to consist in the following devices: "The vessel or chamber containing the oil or hydrocarbon is submerged in water, so as to always keep the said oil vessel or chamber cool, and thereby free from explosive or other accidents. The water vessel is covered with a perforated metal plate which forms the base of the hot-air cylinder, on the top of which the culinary or other vessels to be heated are placed. Vertical tubes or flues are placed in the hot cylinder in such positions as to act as chimneys for the burners. Mica windows are placed in the sides of these flues," so as to enable the operator to watch the flame.

166 The method of construction of so much of the stove as is material to this case is described in the specification as follows: "The base of the stove consists of a vessel, A, resting, for convenience, on short legs *a*. This vessel is intended to contain water, and has a top plate, A', which is preferably made of cast metal and strong enough to support all the parts of the stove which are about it. This plate A' is annular in form if the stove is of general cylindrical

construction (which is preferable to other forms), the central opening in the said plate being nearly equal in area to the sectional area of the hot-air cylinder C, which rests upon it. Concentrically arranged around this central opening is a series of perforations, *a'*, through which atmospheric air passes down into the top part of the vessel A, and thence up through the hot-air cylinder and its chimneys *x x x*. The hot-air cylinder C is preferably built of sheet metal, and is hinged to its base plate A' by the hinge *c* at the back side of the stove, so as to permit the top parts of the stove to be tipped back out of the way of trimming the wick, or for other purposes."

The first claim, and the only one, which is said to have been infringed is as follows: "The water vessel A, with its perforated top plate A' and hot-air cylinder C, hinged at *c* to plate A', and top perforated plate L, all arranged and connected together substantially as and for the purpose set forth."

The perforated plate A' and the hinge at *c* to plate A' are the important features of this combination.

In the defendants' stove the cylinder rests upon three struts,
167 which extend from the base ring of the cylinder to the wall of the water chamber, so that the weight of the cylinder and the utensils which may be placed upon it is thrown against the wall instead of upon the bottom of the water chamber. The cylinder is hinged to its base ring.

The contention of the defendants is that they make their stove in accordance with the construction shown or pointed out in the Canadian letters patent of May 15th, 1873, to James Henry Thorp, as assignee of John A. Frey, for "the Summer Queen improved coal-oil stove," and as such stoves were made in New York in 1873 by Mr. Frey, the inventor.

Whatever may be said by the plaintiff in regard to Frey's hinging his cylinder upon the base ring, I think that it will not be denied that he used the defendants' three struts before 1873.

It is sufficient for the purpose of this case to say that the three struts are not the plaintiff's perforated base-plate A'. The object of this perforated plate was to perform a peculiar and material function in addition to that of supporting the cylinder, and which was to admit air through the perforations to the flame in a certain way, viz., by passing "down into the top part of the vessel A, and thence up through the hot-air cylinder and its chimneys." The defendants' struts do not perform the office which required perforations and a plate.

It is not necessary to determine whether the location of the defendants' hinge was described in the Canadian patent with such accuracy as to show to the public how or where it was to be placed,
or whether it was a mere vague suggestion of what might be
168 done, or whether, as is claimed by the defendants, the hinging to the base-ring in the manner now used was, in fact, adopted, and was in public use in the city of New York in

1873, because the defendants' structure does not contain the perforated plate A′ of the patented combination.

Let the bill be dismissed.

ARTHUR V. BRIESEN,
For the Plaintiff.
BENJ. F. LEE,
For the Defendants.

(Endorsed:) Sharp *v.* Reissner & *al.* Decision. Shipman, J Filed March 14, 1883.

169 At a term of the circuit court of the United States for the second circuit and southern district of New York held in the city of New York on the 19th day of March, 1883.

Present: The Hon. Nathaniel Shipman, judge.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER and CHARLES E. MEIER, Impleaded with Another.

This cause came on to be heard at the October, 1882, term of this court, and was argued by counsel, and was held under advisement until the February, 1883, term of this court.

170 Now, therefore, upon consideration thereof, it is ordered, adjudged, and decreed that the defendants, Christoph Riessner and Charles E. Meier, have not infringed upon the letters patent dated May 16th, 1876, numbered 177,334, granted to Abner B. Hutchins for a new and improved hydrocarbon stove.

And it is further ordered, adjudged, and decreed that the bill of complaint herein be, and the same hereby is, dismissed on the merits as against the defendants, Christoph Riessner and Charles E. Meier.

And it is further ordered that the said defendants, Christoph Riessner and Charles E. Meier, recover of the complainant, James L. Sharp, their costs herein to be taxed.

N. SHIPMAN, *Judge.*

171 "Endorsed:". U. S. circuit court, southern district of New York. James L. Sharp *vs.* Christoph Riessner and Charles E. Meier, impleaded with another. Decree dismissing bill. Turner, Lee & McClure, solicitors for def'ts, C. Riessner & Meier, 20 Nassau street, New York. U. S. circuit court. Filed Mar 20th, 1883. Timothy Griffith, clerk.

172 *Affidavit of Service.*

CITY AND COUNTY OF NEW YORK, *ss:*

U. S. Circuit Court, So. Dist. of N. Y.

J. L. SHARP *against* CHRISTOPH RIESSNER & *al.*

Harry M. Turk, being duly sworn, says that he is of the age of eighteen years and upwards; that on the 12 day of April, 1883, be-

tween the hours of 1 p. m. and 3 p. m., at 50 New Chambers St., N. Y. city, he served C. E. Meier, one of the def'ts herein, with the annexed appeal by showing him the same, and by leaving a copy of the same with the said Meier; and he further says that he knew the person served to be one of the def'ts in this action.

(S'g'd) HARRY M. TURK.

173 Sworn to before me this twelfth day of April, 1883.

[Notarial Seal.]

(S'g'd) WILLY G. E. SCHULTZ,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

174 Circuit Court of the United States for the Southern District of New York. In Equity.

JAMES L. SHARP
vs.
CHRISTOPHER RIESSNER & CHARLES E. MEIER, Impleaded with Another.

We hereby consent that the foregoing papers shall constitute the record to be sent by the clerk of the circuit court of the United States for the southern district of New York to the Supreme Court of the United States on the appeal to said Supreme Court in the above-entitled cause; but nothing herein contained is to be construed as omitting from the record any of the exhibits herein which are copies of papers from the Patent Office of the United States or of any other country.

New York, September 36, 1883.

(S'g'd) BRIESEN & STEELE,
175 *Compl't's Sol'rs.*

(S'g'd) TURNER, LEE & McCLURE,
Sol'rs for Defendants.

C. REISSNER & MEIER.

(Endorsed:) U. S. circuit court. Filed Sep. 28, 1883. Timothy Griffith, clerk.

176 United States Circuit Court, Southern District of New York. In Equity.

JAMES L. SHARP
vs.
CHRISTOPH RIESSNER and CHARLES E. MEIER, Impleaded with ADAM RIESSNER.

It is hereby stipulated and consented that the clerk of this court send all of the model exhibits and patent exhibits used on the final hearing in this case to the clerk of the United States Supreme Court at Washington, D. C., to be used at the hearing of the appeal taken in this cause to the United States Supreme Court, and that the clerk of the United States Supreme Court be requested to return such ex-

hibits to the clerk of this court, after the decision of such appeal.

177 (S'g'd) TURNER, LEE & McCLURE,
Defendants' Solicitors.

(S'g'd) BRIESEN & STEELE,
Compl't's Sol'rs.

New York, 3rd Sept., 1883.

Ordered accordingly.

(S'g'd) SAM'L BLATCHFORD,
Circuit Justice.

(Endorsed:) U. S. circuit court, so. dist. of New York. James L. Sharp *vs.* Christoph Riessner *et al.* Stipulation and order thereon as to transmitting exhibits to clerk of the Supreme Court, etc. U. S. circuit court. Filed Sep. 10, 1883. Timothy Griffith, clerk.

178 United States Circuit Court, Southern District of New York, Second Circuit. In Equity.

JAMES L. SHARP, Complainant and Appellant,
vs.
CHRISTOPH RIESSNER and CHARLES E. MEIER, Impleaded with ADAM RIESSNER, Defendants and Appellees.

To the honorable the Supreme Court of the United States:

The appeal of James L. Sharp, complainant and appellant above named, respectfully showeth that upon the 30th day of April, 1881, the above-named complainant filed his bill of complaint in the circuit court of the United States for the southern district of New York, in the second circuit, against the above-named defend-

179 ants, Christoph Riessner, Adam Riessner, and Charles E. Meier, in a suit in equity, alleging that said defendants had infringed the rights of the complainant therein as secured to him by letters patent granted on the 16th day of May, 1876, to Abner B. Hutchins, assignor to James L. Sharp, complainant and appellant, and numbered 177,334, and praying for an accounting and payment to the complainant by the said defendants of the profits by them realized and of the damages suffered by said James L. Sharp, complainant and appellant, by reason of said infringement of said letters patent, and also that the writs of subpœna and of injunction might be issued against said defendants, their clerks, agents, servants, and workmen, &c. This complainant and appellant further showeth, that pursuant to said prayer, a subpœna *ad re-*

180 *spondendum* issued out of and under the seal of said circuit court, and was duly served on said defendants, Christoph Riessner and Charles E. Meier, and that said defendants, Christoph Riessner and Charles E. Meier, appeared and answered said bill of complaint, and, among other things in their answer, denied the validity of said letters patent, and denied that they infringed the same.

That a general replication was filed by the complainant to said answer, and, issue being thus joined, thereafter testimony was taken, and such proceedings were had in said cause that on the 20th day of March, 1883, a final decree was entered in said circuit court, wherein it was in substance adjudged and decreed that the said bill of complaint be dismissed, with costs to the defendants, Christoph Riessner and Charles E. Meier, to be taxed, which said decree is, as this appellant is advised, erroneous and ought to be re-

181 versed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the decree of said circuit court, together with the bill of complaint, answer, replication, pleadings, depositions, evidence, and exhibits and proceedings in said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed, with costs, and the complainant may be given the relief prayed for in his bill of complaint, or such other decree made as the Supreme Court shall deem just.

April 9th, 1883.

JAS. L. SHARP.

182 BRIESEN & STEELE,
Solicitors for Appellant.
A. V. BRIESEN,
Of Counsel.

Appeal allowed.
Ap'l 10, 1883.
(S'g'd) WM. J. WALLACE.

(Endorsed:) U. S. circuit court, so. dist. of N. Y. J. L. Sharp *vs.* Christoph Riessner & *al.* Appeal. Briesen & Steele, compl't's sol'rs, 229 Broadway, New York.

Due and timely service of a copy of the within appeal is hereby admitted this 12th day of April, 1883.

TURNER, LEE & McCLURE,
183 *Sol'rs for Def'ts, C. Reissner & Meier.*

[Endorsed:] U. S. circuit court. Filed Apr. 12, 1883. Timothy Griffith, clerk.

184 United States Circuit Court, Southern District of New York.
In Equity.

JAMES L. SHARP, Complainant and Appellant,

vs.

CHRISTOPH RIESSNER and CHARLES E. MEIER, Impleaded with Adam Riessner, Defendant- and Appellees.

Know all men by these presents that we, James L. Sharp, appellant, of New York, in the county of New York and State of New

York, and Gilbert G. Wood, of 169th Str. and Franklin Ave., New York city, and Joshua H. Cort, of 431 Washington Ave., Brooklyn, N. Y., are held and firmly bound unto the above-named Christoph Riessner and Charles E. Meier, defendants and appellees, their executors, administrators, or assigns, in the sum of five hun-
185 dred dollars, to be paid to the said Christoph Riessner and Charles E. Meier, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the — day of April, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas the above-named James L. Sharp has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of his obligation is such that
186 if the above-named James L. Sharp shall prosecute his said appeal to effect and answer the whole amount of the judgment and decree and all damages and costs (including just damages for delay) if he fails to make his plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAS. L. SHARP. [L. S.]
GILBERT G. WOOD. [L. S.]
JOSHUA H. CORT. [L. S.]

Sealed and delivered in the presence of—
WILLY G. E. SCHULTZ.

187 UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

On this 9th day of April, 1883, before me personally appeared James L. Sharp, Gilbert G. Wood, and Joshua H. Cort, to me personally known, and also known to me to be the person- described in and who executed the foregoing obligation, and severally acknowledged the execution thereof.

WILLY G. E. SCHULTZ,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK, } ss:
City and County of New York, }

Gilbert G. Wood, one of the persons mentioned in and who
188 executed the foregoing obligation, being duly sworn, says that he is a citizen of the United States, residing at 169th street &

Franklin avenue, New York city, and that he is a householder within the State of New York, and is worth the sum of one thousand dollars over and above all debts and obligations and property exempt by law from execution.

GILBERT G. WOOD.

Subscribed and sworn to before me this ninth day of April, 1883.
[NOTARIAL SEAL.] WILLY G. E. SCHULTZ,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK; } *ss.:*
City and County of New York, }

Joshua H. Cort, one of the persons mentioned in and who
189 executed the foregoing obligation, being duly sworn, says that he is a citizen of the United States, residing at 431 Washington Ave., Brooklyn, N. Y., and that he is a freeholder within the State of New York, and is worth the sum of one thousand dollars over and above all debts and obligations and property exempt by law from execution.

JOSHUA H. CORT.

Subscribed and sworn to before me this ninth day of April, 1883.
[NOTARIAL SEAL.] WILLY G. SCHULTZ,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

(Endorsed:) U. S. circuit court, so. dist. of N. Y. J. L.
190 Sharp *vs.* Ch. Riessner & *al.* Bond. Briesen & Steele, compl't's sol'rs, 229 Broadway, New York.

Bond approved as to form and sufficiency of sureties.
Apr. 10, 1883.
(S'g'd) WM. J. WALLACE.

[Endorsed:] U. S. circuit court. Filed April 11, 1883. Timothy Griffith, clerk.

191 *Affidavit of Service.*

CITY AND COUNTY OF NEW YORK, *ss.:*

U. S. Circuit Court, So. Dist. of N. Y.

JAMES L. SHARP *against* CHRISTOPH RIESSNER *et al.*

Harry M. Turk, being duly sworn, says that he is — the age of eighteen years and upwards; that on the 12th day of April, 1883, between the hours of 1 p. m. and 3 p. m., at 50 New Chambers St., New York, he served C. E. Meier, one of the def'ts herein, with the annexed citation by showing him the same, and by leaving a copy of the same with the said Meier.

And he further says that he knew the person served to be one of the def'ts in this action.

(S'g'd) HARRY M. TURK.

Sworn to before me this twelfth day of April, 1883.

[NOTARIAL SEAL.] WILLY G. E. SCHULTZ.

192 *Notary Public, Kings Co., N. Y.*

Certificate filed in N. Y. Co.

193 United States Circuit Court, Southern District of New York, Second Circuit. In Equity.

JAMES L. SHARP, Complainant and Appellant,

vs.

CHRISTOPH RIESSNER, and CHARLES E. MEIER, Impleaded with ADAM RIESSNER Defendants and Appellees.

By the honorable William J. Wallace, circuit judge in and for the circuit court of the United States for the southern district of New York, within the second circuit, to Christoph Riessner and Charles E. Meier:

Whereas James L. Sharp has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the southern district of New York, made in favor of the said Christoph Reissner and Charles E. Meier,

194 and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do in the matter of said appeal what may remain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 10th day of April, in the year of our Lord one thousand eight hundred and eighty-three.

(S'g'd) WM. J. WALLACE,
Circuit Judge.

(Endorsed:) United States circuit court, southern dist. of New York, second circuit. James L. Sharp *vs.* Christoph Riessner & *al.*

195 Citation. Briesen & Steele, compl'ts' sol'rs, 229 Broadway, New York. Due and timely service of a copy of the within citation is hereby admitted this 12th day of April, 1883. (S'g'd) Turner, Lee & McClure, sol'rs for def'ts, Riessner & Meier. U. S. circuit court. Filed Apr. 12, 1883. Timothy Griffith, clerk.

196 UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to one hundred and ninety-five, inclusive, contain a true and com-

plete transcript of the record and proceedings had in said court in the case of James L. Sharp against Christoph Riessner, Adam Riessner, and Charles E. Meier, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this third day of October, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the said United States the one hundred and eighth.

[Seal of U. S. Circuit Court, Providence.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 351. James L. Sharp, appellant, *vs.* Christoph Riessner and Charles E. Meier. Filed 8th October, 1883.

119-631

OCT 25 1886
JAMES H. McKENNEY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 98.

JAMES L. SHARP,
Appellant,

vs.

CHRISTOPH RIESSNER AND CHARLES E. MEIER.

BRIEF FOR APPELLANT.

ARTHUR v. BRIESEN,
Attorney for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 98.

JAMES L. SHARP,
Appellant,

vs.

CHRISTOPH RIESSNER AND
CHARLES E. MEIER.

Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF ON BEHALF OF THE APPELLANT.

Statement of the Case.

The appellant, the complainant below, brought this suit for the purpose of restraining the defendants from infringing upon the first claim of Letters Patents No. 177,334, bearing date May 16, 1876, granted to A B. Hutchins for Improvement in Hydro-Carbon Stove. The complainant became the owner of said patent by assign-

ment, dated April 18, 1881 (page 24, Record). The defendants, at the time this suit was brought, were admittedly selling a stove of which "Exhibit Riessner Stove" is a correct illustration (p. 26, fol. 15, Record).

The claim of the patent which the defendants are charged with infringing is in words as follows:

"*The water vessel A with its perforated top plate A'*
"*and hot air cylinder C, hinged at c to plate A', and top*
"*perforated plate L, all arranged and connected together,*
"*substantially as and for the purpose set forth.*"

This claim, it will be seen, comprises the conjoint use of the following three principal elements:

First, the water vessel, having a perforated *top plate*, that is to say, a plate resting on the top of the water vessel, and having holes in it through which air may enter into contact with the water in said vessel, the inner annulus of said top plate forming a support for the hot-air cylinder above.

Second, the hot-air cylinder, or heating drum, having a hinge at *c*, by which it is connected to the plate *A'*. The specification says that the hot-air cylinder "*is hinged to its base plate A' by the hinge c at the back side of the stove, so as to permit the top parts of the stove to be tipped back, out of the way of (for) trimming the wicks, or for other purposes.*"

Third, the perforated plate *L*, which, being placed upon the top of the heating drum, enables the same to support the cooking vessel, and without which the entire structure would not be an operative device.

The record shows, that, before this invention came into use, oil stoves having water baths above the oil chambers were mostly made on the plan of "Defendants' Exhibit Riessner Stove Old Style" (see answers 181 to 205, pages 60 to 64, Record), in which the ring that carries the heating drum rests on legs, whose lower ends are fastened to the *bottom* of the water chamber. The heating drum itself

in this old style of stove is hinged to a strut or post, which rests partly on the bottom of the water pan, partly against the wall of the same. The said strut or post, as the proofs show, and as the "Exhibit Riessner Stove Old Style" will demonstrate, is liable by use to be so strained, that when the drum is to be brought back into a vertical position it will no longer rest properly on the supporting ring.

Some of the older contrivances, as, for example, that shown in the Bowles patent of 1871, have no hinge at all, but have an entirely detachable heating drum, which, when the wicks are to be trimmed, or the lamp body inspected, must be entirely taken off, and with its blackened bottom placed upon a table or other extra support.

The most objectionable feature of these older contrivances was, that the legs which supported the ring rested upon the bottom of the water pan. This caused the thin bottom of the sheet metal water pan to be unduly strained by the weight of the top of the stove and of the cooking utensil and its contents, and had the further effect of letting rust destroy the said legs, they being always in water. A heavy pot, when put upon the stove, would bend the diaphragm between the oil and water vessels and make the paint peel off at the places where the legs that carry the ring join said diaphragm.

It was Hutchins' endeavor to overcome these defects, and he did overcome them by a very simple contrivance. His invention was to take the legs out of the water pan, carry them to the top of the wall of the water pan, and place the hinge upon this outwardly projecting ring—support or "plate." By this arrangement the distance between the hinge and the inner ring is invariable, and when the drum is swung into its vertical position, it always finds its proper place on the ring. Moreover, the destruction of the supports of said ring by water is entirely avoided.

In the defendants' infringing structure all the features of complainant's patent are used, except that the top plate *A'*, instead of having fifteen holes for the admission of air to the water chamber, has but three holes, and with the further difference, that the said top plate in the defendants' structure is slightly inclined, being highest in the middle,

while in the patent in suit it is represented as entirely horizontal.

Inasmuch as the function of the top plate *A'* in the complainant's patent is three-fold, namely:

(*a.*) To support the heating drum in the vertical position;

(*b.*) To support the hinge on which the heating drum can be turned; and

(*c.*) To admit air to the water bath;

and inasmuch as the top plate of the defendants' structure performs these same three functions, the difference in form and inclination between said top plates would appear to be immaterial. Nevertheless the Court below in its opinion says:

"*It is sufficient for the purpose of this case to say, that "the three struts (of defendants' infringing structure) are "not the plaintiff's perforated base plate A'. The object "of this perforated plate was to perform a peculiar and "material function, in addition to that of supporting the "cylinder, and which was to admit air through the per-"forations to the flame in a certain way, viz., by passing "down into the top part of the vessel A, and thence up "through the hot air cylinder and its chimneys. The de-"fendants' struts do not perform the office which required "perforations and a plate.*"

Whether, therefore, the mere inclination given by defendants to the top plate *A'* of the complainant's patented structure is a substantial departure from the invention claimed in the patent, is one of the questions which we ask this Honorable Court to determine.

The only witness who testified for the defendants in this case was Mr. Frey, ~~himself one of the defendants~~. During the first part of his examination he seeks to show that no substantial difference exists between the old kind of Riessner stove and the new kind, and also that the stoves made

by him in former years were made in accordance with his patent No. 156,149, of October 20, 1874, and like or similar to the stove shown in his Canadian Patent No. 2,366 of May 15, 1873. In both these patents of Mr. Frey the "Exhibit Riessner Old Style Stove" is substantially represented, the legs that support the hinge being in each instance separated from the ring that supports the heating drum in the vertical position, thereby rendering the structure liable to the objections heretofore pointed out. In each of these patents the legs which support the ring rest in the water bath, as will be hereinafter pointed out.

Nothing in the first examination of Frey intimates that such a structure as the defendants' infringing structure in this suit was made before the year 1876. After the complainant had completed his rebutting testimony, and had shown, by his expert witness, Dr. Sloane, that the said Canadian patent of Frey was not an anticipation of complainant's patent, the defendants obtained an order for the introduction of sur-rebutting testimony. This order will be found on page 90, fol. 162, of the Record. It provides that defendants may examine one witness

"*to show that the model of the Frey Canadian patent "offered in evidence by complainant in rebuttal does not "correctly and fully show the subject matter described and "shown in said Frey Canadian patent.*"

Under cover of this order Frey was examined December 19, 1882 (see page 88, Record), and during this examination he implied, that the things he had made in 1872 resembled the infringing stove rather than the Canadian patent or the United States patent of 1874 (Answer 5, page 89, and 6, page 90).

This testimony was taken under objection, and, it seems to us, in disregard of the order of the Court allowing it to be taken, and moreover is not testimony of a character sufficient to prove, that the witness had manufactured prior to May, 1876, a thing like that which now he is charged with making in violation of complainant's rights. Yet the Court below, referring clearly to this testimony of Mr. Frey, says:

"*I think it will not be denied that he (Frey) used the de-*
"*fendants' three struts before* 1873."

It is denied, it was denied below, and that is one of the grounds of this appeal. The concluding sentence of the opinion of the Court below shows, that the complainant's bill was dismissed, because, in the opinion of the Court, no equivalent of the Plate A' is found in the defendants' alleged infringing structure.

The foregoing being a brief recital of the facts in the case, we submit the following

ASSIGNMENT OF ERRORS.

I.—The Court below erred in holding that the defendants did not infringe the first claim of complainant's patent.

II.—The Court below erred in finding that the witness Frey made the structure complained of in this suit before the year 1876, and therefore

III.—The Court below erred in refusing the complainant the decree prayed for in his bill of complaint.

I.

INFRINGEMENT.

In its opinion the Court below says, speaking of the claim here in controversy, that

"*The perforated Plate* A' *and the hinge at c to Plate* A',
"*are the important features of this combination.*"

Comparing, then, the defendants' infringing structure with the complainant's patented device, of which "Exhibit Hutchins Model" is a correct representation, we find that both have a plate, which is applied to the top of the

water bath, and which serves to support the hinge at *c*, that is, at the back of the stove, and the heating drum by a central ring. In other words, the Plate *A'*, in the complainant's structure, supports the hinge, and supports also, by its central portion or ring, the heating drum, when the latter is in its vertical position.

One difference between the two structures is found in the number of air holes. Complainant's patent shows fifteen air holes and fifteen intervening solid parts. Defendants' plate has but three air holes and three intervening solid parts. These the Court below terms "struts." It needs no argument to show that the number of air holes and the number of solid parts or "struts" between them, is not of the essence of complainant's patent, and that therefore the difference is immaterial.

The second difference is that the complainant's plate *A'* is entirely horizontal, while the defendants' plate is sloping, being highest in the middle. This difference the Court below deems material, because in describing the operation of the stove the complainant's patent says:

"*Concentrically arranged around this central opening*
"*is a series of perforations, a', through which atmos-*
"*pheric air passes down into the top part of the vessel*
"A, *and thence up through the hot air cylinder and its*
"*chimneys.*"

It is clear that where the plate *A'* is entirely horizontal, air passing through it into the water vessel must pass *down* in a nearly vertical direction. Hence, the particular form of plate *A'* shown in the patent requires the air to pass *down*. The more the plate *A'* is inclined, the more will it permit air to pass *in part* horizontally through its holes, and, *in part* vertically or downwardly into the water vessel. Nevertheless, it is clear that whatever air goes through the perforations of the defendants' structure into the water vessel must pass down, otherwise it will not get into the water vessel. It only remains to ascertain whether in the ordinary functions of such a stove any air ever gets from the outside into the water vessel.

The function of the water vessel is, by covering the oil reservoir, to keep the oil cool. This function, however, would be defeated, if, by the heat of the flame, the water itself should be brought into a boiling or very hot condition, for in that case it would transmit its heat to the oil below and fail to keep it cool.

In order to prevent the water from becoming overheated, its upper surface is open to a continuous current of atmospheric air, which, sweeping over it in its passage to the flame, serves to cool the water and to carry away with it any steam or gaseous exhalations that arise from the water. The flame, which is above the centre of the water chamber, creates a suction upon the atmosphere beneath it, and therefore draws air from the central portion of the water chamber.

It follows that the free atmospheric air from the outside, which is to replenish the air taken by the flame, must necessarily, at least in part, pass into the upper portion of the water chamber, and therefore it must pass downwards through the perforations of the top plate to a sufficient extent to replenish that air which is taken from the lowermost stratum by the suction of the flame. Any air which passes horizontally through these openings will not affect the operation of the stove at all. If this is a correct view of the operation, it follows that, even if the downward passage of the air were a necessary function of the complainant's patented structure, that function also is found in the defendants' structure.

But the claim of the patent is not for a function. It is for a combination of parts, and incidentally, in describing these parts, one of the functions has been specified, in manner above stated. *Non constat* but that a slight and immaterial modification of the structure would carry with it an equally slight and immaterial modification of function. It might as well be said that because the specification states that the air passes into the chimneys, the defendants' structure would not infringe the first claim unless it contained chimneys. But chimneys are not made an essential part of the first claim, nor is the absolutely horizontal position of the plate *A'* made an essential part thereof.

It is essential to the patent that the plate *A'* be a top plate to the water vessel, so that no portion of it can be rusted away by water. It is essential likewise that that top plate have holes in it for the purpose of letting air pass through these holes. It is essential likewise that that top plate have an innermost portion or annulus for the support of the hot air drum. And it is, moreover, essential that the said top plate constitute the support for a hinge *back or outside* of said ring or annulus, by which it is combined and connected with the hot air drum.

These essential features are all found in the defendants' structure, and, being there, make it an infringement of complainant's patent.

II.

Anticipation, as Attempted to be Proved by the Witness Frey.

The Court below in its opinion uses the following language:

"*The contention of the defendants is, that they make "their stove in accordance with the construction shown or "pointed out in the Canadian Letters Patent of May "15, 1873, to James Henry Thorp, as assignee of John A. "Frey, for the 'Summer Queen' improved coal oil stove, "and that such stove was made in New York in* 1873 *by "Mr. Frey, the inventor. Whatever may be said by the "plaintiff in regard to Frey's hinging his cylinder upon "the base ring, I think it will not be denied that he used "the defendants' three struts before* 1873."

It is admitted that Frey, before 1876, sold stoves under the name of "Summer Queen" stoves. Such a "Summer Queen" stove, as previously sold, is illustrated in the model marked "Exhibit Riessner Stove Old Style," in which the heating chamber is supported on a ring that rests on legs that stand on the bottom of the water pan,

exactly as shown in Frey's Patent No. 156,149 of October 20, 1874. As to the allegation that Frey anticipated Complainant's Patent, his testimony is as follows: (Q. 21 to 24 inclusive, p. 83, Record; also Q. 5, p. 89).

"*Q.* 21. *Please compare your Canada patent with the Exhibit Frey Original Patent,* 156,149, *and point out any difference there may exist between the two in respect to the supports used to sustain the parts above the water pan.*

"*A. In the Canada patent the struts or supports are soldered to the wall of the water chamber, while in the Frey original patent they are soldered to the bottom of the water chamber or top of the oil-holder.*

"*Q.* 22. *Which of the two constructions described in your last answer did you first manufacture and sell?*

"*A. The Canada construction.*

"*Q.* 23. *I observe that in the water pan of the Canada patent the struts rest upon a step in the wall of the water pan. Did all the stoves made and sold by you prior to the date of the Canada patent have that step?*

"*A. They did not.*

"*Q.* 24. *State particularly where and when you first made them without the step in the wall of the water pan, and where and when you first made them with the step, as shown in the Canada patent, and describe those made without the steps.*

"*A. I first made those without the step at my brother's, George A. Frey's place of business, Eighth avenue and Thirty-fifth street, this city, the water bath or pan in shape being made perpendicular, as in the Hutchins patent, and the struts or supports soldered directly on top or on the top edge of the water pan. I also made a double copper stove of the same description, excepting being oblong or oval, which I sold to a lady in Jersey City for some* $18 *or* $20,

"*as near as I can remember. I afterwards adopted* "*a flaring stamped pan for an oil and water reser-* "*voir, as shown in the Canada patent, soldering the* "*struts or supports to the top of such pan,* AFTER- "WARDS ADDING AN ADDITIONAL RIM TO INCREASE THE "DEPTH OF THE WATER THEREON OR THEREIN CON- "TAINED.

"*The stamped or flaring pans were used by me in* "*manufacturing oil stoves having the step, as shown* "*in the Canada patent in the latter part of* 1872 *and* "*early part of* 1873, *at my then place of business in* "*Jersey City.*

"*The stoves spoken of as being made at my* "*brother's, Geo. A. Frey's, were first made by me in* "*the summer of* 1872."

"*Q. 5. (p.* 89.) *Can you produce or point out any* "*structure in which the base rim or ring* J *is sup-* "*ported on struts, and has the chimney hinged to the* "*said rim or ring* J, *as described in your last an-* "*swer and in said Canada patent; and, if yea,* "*please point out or produce the same for the pur-* "*pose of illustration?*

"*A. I can; the Exhibit "Sharp* vs. *Riessner,* "*Complainant's Exhibit Riessner Stove, J. A. S.,* "*Ex'r, December* 7, 1881," *is an exact structure of* "*the Canada patent, excepting that since I made* "*them at that early day, cast iron has been substi-* "*tuted for sheet metal for the struts. That differ-* "*ence, however, I consider as immaterial as relat-* "*ing to the invention.*"

It seems clear that the mere assertion of *one* witness, ~~and he a defendant to the suit~~, is not proof against the *prima facia* case of infringement which was made out by the complainant. Frey claims, in the last quoted answer, that the things now made by defendants, and complained of in this suit, are just like the things described and shown iu the Canadian patent. The model of the Canadian patent speaks for itself as to the difference, and is the best

answer to the assertion of the witness. His statements in answers 21 to 24 are of a character insufficient to enable the complainant to rebut them. If, in 1873, the witness made things like the things complained of in the present suit, why does he not produce one of the old structures, or proof of sale thereof, or a witness who actually bought it of him? In the absence of such proof any mere assertion of the defendant Frey cannot amount to testimony sufficient to overthrow complainant's patent.

As to the Canadian patent of Frey, the certified model thereof shows, first, that the supporting ring for the heating drum rests on struts that extend to a step in the water pan, and not to the top thereof. Frey explains why this step is used in his answer 24, where he says:

"*I afterwards adopted a flaring stamped pan for an oil* "*and water reservoir, as shown in the Canada patent,* "*soldering the struts or supports to the top of such pan,* "AFTERWARDS ADDING AN ADDITIONAL RIM TO INCREASE "THE DEPTH OF THE WATER *thereon or therein con-* "*tained.*"

This explains that the supporting struts for the ring in the Canadian patent extend down into the water bath and are liable to be rusted away the same as though they extended all the way to the bottom thereof. Hence, the Canadian patent does not show a *top plate* on the water bath such as the Hutchins patent specifically seeks to claim.

Furthermore, the Canadian patent shows the hinge which carries the heating drum to be altogether disconnected from the struts that support the ring, and, as a consequence, whenever the heating drum is thrown back, the hinge-holding support is strained and bent out of shape, and in bringing the drum back to the vertical position it fails to find its bearing on the ring. Any mere assertion in the Canadian patent, that the hinge *may be* on the ring itself, is without importance to the present litigation, because, if it were on the ring there shown, it would be impracticable, because the hinge must not be on the ring

where it directly supports the heating drum, to be practicable, but must be back of that ring "*at c*" as the complainant's patent shows it to be, and as defendants' infringing structure in suit shows it. Even if the Canadian patent had shown the ring to carry a proper hinge "*at c*" for supporting the heating drum, it does not show said ring to be a part of a top plate which rests on the top of the water chamber, and which does not extend into the water therein contained.

The fact that "Exhibit Riessner Stove Old Style" was made by defendants until about the year 1879, and that it never occurred to them to adopt a *top plate* for the water chamber and for the hinge until after the Hutchins patent had been issued, raises a strong presumption against the defense of prior use by defendants.

On the comparison of the Canadian, and in fact all the alleged anticipating devices, with complainant's patent, we respectfully refer the Court to the testimony of Dr. Sloane on pages 72 to 75 of the record.

III.

THE COMPLAINANT IS ENTITLED TO THE RELIEF ASKED.

Inasmuch as it appears that the defendants infringe the complainant's patented stove, and inasmuch as they have failed to bring satisfactory evidence of prior use of the same invention, or evidence of a prior description thereof in any patents, it seems clear that the complainant is entitled to a decree.

The invention is one of value both to complainant and to defendants. Were it not so, the defendants would not make use of it, but would prefer to follow the construction shown in their Canadian or in their United States patent of 1874, that is to say, the construction exhibited in "Exhibit Riessner Stove Old Style."

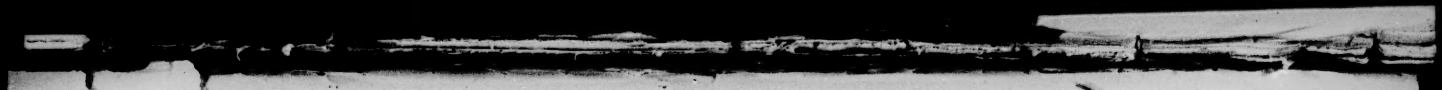
Notwithstanding the dire consequences which are

threatened, and the illegality of this suit under laws of the State of New York, which are best known to counsel for the respondents, (Letter, p. 25, Record), the complainant insists upon having his rights determined according to the laws of the United States, and submits the same to this Court, convinced that he is entitled to the relief originally prayed.

Respectfully submitted.

ARTHUR v. BRIESEN,
Attorney for Appellant.

NEW YORK, October 19, 1886.



Supreme Court of the United States.

JAMES L. SHARP, APPELLANT,

vs.

CHRISTOPH RIESSNER AND CHARLES E. MEIER.

Brief for Appellees.

B. F. LEE,
Of Counsel.

M. B. BROWN, Printer and Stationer, 49 & 51 Park Place, N.Y.

Supreme Court of the United States.

JAMES L. SHARP,
Appellant,
vs.
CHRISTOPH RIESSNER AND
CHARLES E. MEIER.

Brief for Appellees.

This is an appeal from a decree in equity dismissing the complainant's bill on the merits.

The bill in this cause was filed for the alleged infringement of a patent dated May 16, 1876, application filed October 4, 1875, No. 177,334, granted to Abner B. Hutchins, for improvement in hydro-carbon stoves. No date of invention prior to the date of application for the patent is proved. "Defendants' Exhibit Hutchins' Model" shows the structure described in the patent (p. 86).

The first claim of the patent is the only one in controversy. It is as follows:

"1. The water-vessel A, with its perforated top plate A' and hot-air cylinder C, hinged at *c* to plate A', and top perforated plate L, all arranged and connected together substantially as and for the purpose set forth."

The thing complained of as an infringement is a coal oil stove, a specimen of which is in evidence as "Complainant's Exhibit Riessner Stove" (p. 26.) This stove is sold by the firm of C. Riessner & Co., of New York, of which the defendants are members, under the trade name of "The Summer Queen" (p. 84).

The answer denies infringement (pp. 12–13), and sets up among other defenses, that said patent did not embrace a patentable subject matter (p. 13); that the invention of said Hutchins had been patented prior to his supposed invention and discovery thereof; that said Hutchins was not the first inventor or discoverer of any material or substantial part of the thing patented, giving the usual statutory notices of prior patents, and prior knowledge, and that the said alleged invention of Hutchins had been in public use and on sale in this country for more than two years before his application for said patent.

The Court below decided substantially that the patent was not infringed, because the defendants' stove did not contain the "top plate A′", which forms an element in the combination claimed in the patent.

I.—The Court below was right in deciding that, assuming the plaintiff's patent to be valid, the defendants' goods did not infringe it.

1. The proof of infringement is unsatisfactory. (See evidence of Sharp, plaintiff, pp. 28–31, 33–35, 44, 45, 57, 58, 62-64).

2. The defendants have affirmatively proved that there is no infringement (pp. 81, 82).

The claim consists of the following elements:

The water-vessel A,

Its perforated top plate A′,

The hot air cylinder C,

The hinge which unites said cylinder at *c*, to plate A′; and

The top perforated plate L,

Said five elements being arranged and connected together substantially as and for the purpose set forth.

Each element of this combination is old (pp. 81–83, 86, 64, and Book of Appellees' Patent Exhibits), except possibly the top plate A′ in the exact form and location of the patent.

But even if some of said elements had been new, the familiar rule of law, that all the elements making up the combination must be used by the defendants in order to constitute an infringement, is decisive of this case (Water-meter Co. *vs.* Desper, 11 Otto, 332).

Mr. Justice Bradley, delivering the opinion of the Court, says (p. 337):

It may be observed, before concluding this opinion, that the Courts of this country cannot always indulge the same latitude which is exercised by English judges in determining what parts of a machine are or are not material. Our law requires the patentee to specify particularly what he claims to be new and if he claims a combination of certain elements or parts, we cannot declare that any one of these elements is immaterial. The patentee makes them all material by the restricted form of his claim. We can only decide whether any part omitted by an alleged infringer is supplied by some other device or instrumentality which is its equivalent.

See also *R. R. Co.* vs. *Mellon*, 14 Otto, 118, and cases cited.

The defendants' coal oil stove does not contain the perforated top plate A′ or any equivalent thereof. This is well shown in the deposition of Frey (p. 82).

Q. 14. Please state where, if at all, in said Riessner stove, there can be found the perforated top plate A′, spoken of in said first claim of said patent No. 177,334?

A. I cannot find any such perforated top plate in the Riessner stove.

Q. 15. Please state where, if at all, in said Riessner stove there can be found the "hot air cylinder C hinged at *c to plate* A′. spoken of in said first claim of said patent No. 177,334?

A. I cannot find any such plate as A′ in patent No. 177,334 in the Riessner stove, to hinge the cylinder to.

And at p. 85.

Q. 32. Referring to Hutchins' patent No. 177,334, speaking of the top plate A′, and its central opening, the specification says: "Concentri-"cally arranged around this central opening is a series of perforations a^1, "through which atmospheric air passes down into the top part of the "vessel A, and thence up through the hot air cylinder and its chim-"neys." Please examine Complainant's Exhibit Riessner Stove, and point out what parts, if any, it contains which are capable of a like mode of operation.

A. I cannot find in the Riessner stove any such like mode of operation.

Q. 33 Suppose that in the Riessner stove the number of struts was multiplied and the spaces between them correspondingly diminished, would it then be capable of a like mode of operation to that inquired of in the last question?

A. It would not.

Q. 34. State your reason for your last answer?

A. In the Riessner stove the cover-rest and its struts or supports are elevated above the water bath, and when in operation the air does not pass down through perforations first into the pan or water bath and then up through the perforated diaphragm, as contemplated and spoken of in the Hutchins patent No. 177,334, and consequently it has not the defense against any sudden gust of air interfering with the flame, frequently causing it to flare up, as the Hutchins patent has.

Q. 35 You have stated that you did not find in Complainan'ts Exhibit Riessner Stove the perforated top plate A′ of the Hutchins patent; state whether such exhibit contains any equivalent construction or any parts operating substantially like said perforated top plate A′?

A. It does not.

II.—THE FIRST CLAIM OF THE COMPLAINANT'S PATENT DOES NOT EMBRACE A PATENTABLE SUBJECT-MATTER.

(1.) *It is a mere aggregation.*

We have already stated the five elements of which the combination of the first claim is composed. Unless all these five elements co-operate to produce a new and useful result, the subject-matter is not patentable.

Reckendorfer vs. *Faber*, 2 Otto, 347.
Hailes vs. *Van Wormer*, 20 Wallace, 353.

It is obvious that in the structure described in the plaintiff's patent, the several elements of the claim do not so co-operate.

The defendants' witness Frey shows that the hinging at *c* of the hot air cylinder C to the plate A′, does not in any manner modify the action of the stove. He states (p. 81):

Q. 11. Referring to Complainant's Exhibit Patent, please state in detail the office and operation of the several parts referred to as making up the subject-matter of the first claim of said patent?

A. The water vessel A performs the office in a measure of a non-conductor of heat, and also gives a certain amount of evaporation of

water in the immediate vicinity of the wick tubes when coming in contact with the same, which I claim assists combustion, and in a measure deodorizes the products of combustion; the perforated top plate A', in this stove, to which the cylinder C is hinged, serves to prevent any sudden draft or gust of air from interfering with the flame or causing it to flare up as in other stoves not so constructed; the hinge on the chimney or cylinder is used as a handy, easy means of turning back the cylinder or chimney for the purpose of trimming or lighting the burner and affords a ready means of adjusting it back to its proper position after being lit. The top perforated plate L, supports any vessel which they may wish to heat, the hot-air cylinder C acts as a chimney, as on an ordinary kerosene lamp, causing the necessary draft to produce combustion, and affords a sufficient amount of space between the vessel to be heated and the flame.

Q. 12. State in what manner the introduction of a hinge, as specified in your last answer, serves, if at all, to affect or modify the operation of the other parts of the structure spoken of in your last answer, and enumerated in the first claim of said patent No. 177,334?

A. It does not affect the other parts at all; the stove would burn the same without the hinge, and would produce the same results.

It is obvious that the water vessel A cannot in any manner affect the operation of the hot-air cylinder C, which merely performs the office of the chimney of a lamp, nor can the top perforated plate L in any manner cooperate with the water-vessel A, or the hinge that unites the hot air cylinder to the plate A'.

An examination of the claim shows that it is, on its face, a mere aggregation and not a combination.

(2.) *The subject matter of the claim does not involve invention.*

Defendant's Exhibit, "Riessner Stove, Old Style" (pp. 61, 62), is admitted to be old. It is shown in Frey's Patent No. 156,149. The improvement, according to plaintiff's contention, consists only in attaching the hinge to the ring or rim that supports the chimney and which in turn is supported by struts extending to the wall of the water vessel instead of being hinged to a strut extending to the bottom of the water vessel (pp. 62–64). No argument is necessary to show that this change could not have involved invention, and therefore it is not patentable.

Penn. R. R. vs. *Locomotive Truck Co.*, 110 U. S., 490, and cases cited on p. 494.

III.—JOHN A. FREY'S SUMMER QUEEN COAL OIL STOVE AND CANADIAN PATENT, DATED MAY 15, 1873, ANTICIPATE THE PLAINTIFF'S ALLEGED INVENTION, IF A CONSTRUCTION IS GIVEN TO THE PATENT THAT IS BROAD ENOUGH TO COVER THE DEFENDANTS' STOVES.

The plaintiff, Sharp, in the course of his examination, when he was called to prove infringement, stated that a correct statement of the patented improvement is that it relates to the manner of supporting the base rim or ring on which the chimney rests by struts from the wall of the water chamber, whereby the weight of the chimney and cooking utensil placed thereon is removed from the bottom of the water chamber and thrown against the wall, thus rendering the construction of that part of the stove more durable,* and he

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* This statement is in the very language of Frey's Canada patent. See also *X-Q.* 204, p. 64, which also quotes the words of the Canada Patent.

For convenience we quote from Frey's Canada Patent, and from the evidence of Sharp (pp. 63, 62, 64), side by side:

CANADA PATENT.

The second part of my invention *relates to the manner of supporting the base rim or ring on which the chimney rests, by struts from the walls of the water-chamber, whereby the weight of the chimney and cooking utensil placed thereon is removed from the bottom of the water chamber and thrown against the wall; thus rendering the construction of that part of the stove more durable.*

SHARP'S EVIDENCE.

x-*Q.* 196. Now is this then a correct statement of your improvement, that it *relates to the manner of supporting the base-rim or ring on which the chimney rests by struts from the wall of the water-chamber, whereby the weight of the chimney and cooking utensil placed thereon, is removed from the bottom of the water-chamber and thrown against the wall, thus rendering the construction of that part of the stove more durable;* and do you claim that the Exhibit Riessner Stove contains this, and that the Exhibit Riessner Stove Old Style, does not?

A. Yes; I claim that a stove with a top plate supported on the outer edge of the water pan, is a decided improvement over a stove like Exhibit Riessner's Old Style Stove; such plate is not shown in Exhibit Riessner's Old Style Stove; in Exhibit Riessner's Stove such plate is shown.

claimed that the Exhibit, "Riessner Stove," contains this, and that a certain other exhibit marked "Riessner Stove Old Style" does not (pp. 62, 63). We may here remark that the specification of the plaintiff's patent shows no ground for these statements.

The third part of my invention relates to hinging the chimney to its base ring or to a strut secured to the walls or bottom of the water chamber, whereby the chimney flues are kept in a proper position over the wick tubes without requiring special adjustment after lighting the wicks.

I are *struts, of any required number or form secured to the wall of the water-chamber, placed inclinedly inward and fastened to the rim or ring J, on which the chimney N rests, to support said rim or ring fixedly over the wick tubes.*

x-*Q.* 193. In what does the improvement consist?

A. It consists in hinging to the top plate that supports the heating chamber and the top of the stove, the whole cylinder.

x-*Q.* 194. The improvement, then, consists in the place where the hinging is located; is that correct?

A. No; it is not wholly the hinge which is the improvement, but in combination with the top plate that supports the heating chamber.

* * * * * * *

x-*Q.* 204. Please look upon Exhibit Riessner Stove, and state whether, under your construction of the patent, it is true that the *struts* may be *of any required number or form, secured to the wall of the water-chamber placed inclinedly inward, and fastened to the rim or ring on which the chimney rests to support said rim or ring fixedly over the wick tubes.* By the word "Struts," I mean the three struts shown in the Exhibit which extend from the supporting ring to the outer circumference of the water-pan?

A. Yes; the plate shown in Exhibit Riessner Stove, which supports the heating chamber and the top, could be made with more openings than what is shown in this, and work equally as well. By openings I mean that there could be more openings here (pointing to the exhibit), in the plate which supports the heating chamber between the centre ring and the outer edge of the water-pan, and answer as well; this plate, as is shown in Exhibit Riessner's Stove, could be made of a different form; it could be raised or flat and probably would answer the same purpose.

John A. Frey proves that in the City of New York, in 1872, and at Jersey City, New Jersey, in the latter part of 1872 and in the early part of 1873, prior to the date of said Canadian patent, he sold coal oil stoves similar in construction to what is described in the Canadian patent (pp. 80, 81, 83, 84, 85); and that about that time he made application for said Canadian patent.

These stoves were sold under the name of the "Summer Queen," which is the name under which the alleged infringing stove is also sold (p. 84). The stoves made by John A. Frey in 1872 and 1873, were the same as defendants' stove complained of as an infringement, except that cast iron is now used for some of the parts where Frey formerly used sheet metal, this difference being entirely immaterial (p. 84), and said Exhibit Riessner Stove is precisely the same in structure as what is described in the Canada Patent.

To meet this evidence the defendants procured what purports to be a certified copy of the model on file in the matter of the Canada Patent, which was offered in evidence under the defendants' objection, and they called the witness Sloane to testify that "it shows correctly the structure described and shown in said Canadian Patent" (p. 72); and thereupon he proceeded to draw a distinction between said model and what is described in the first claim of Hutchins' patent, which distinction is as follows: "That the hot air cylinder of the model is *not hinged to the ring supporting it*, but is hinged to a strut which is quite independent and separate from said ring" (pp. 72, 73).

His statement that the model correctly shows the structure described and shown in the Canadian Patent is directly contradicted by the language of the patent, and by the evidence of John A. Frey, who was recalled by the defendants in surrebuttal.

He testifies in reference to said model and patent, as follows (p. 89):

I have examined the same, and find that it does not embrace all the features described in the Canada Patent, the difference, however, I never deemed as being material. I find that in the Canada Patent "the third part of my invention relates to *hinging the chimney to its base ring* or to a strut secured to the wall or bottom of the water chamber, whereby the chimney flues are kept in a proper position over the wick tubes without requiring special adjustment after lighting the wicks." I find that the model does not show the whole of that construction, insomuch as the hinge K is not hinged to the rim or cone support, as I more generally made and sold them at that time. I further quote: "K is a hinge connecting the chimney to a strut L, secured to the wall of the water chamber, and which strut may be further secured by a brace M bearing on the bottom of the water chamber or other convenient arrangement, *or the chimney may be hinged to the rim or ring J, as before described*," and the usual manner in which I fastened the hinge.

IV.—THE PATENT IS VOID BECAUSE THE THING PATENTED HAD BEEN IN PUBLIC USE OR ON SALE IN THIS COUNTRY FOR MORE THAN TWO YEARS BEFORE HUTCHINS' APPLICATION FOR HIS PATENT.

If any construction can be given to the patent that can possibly include the defendants' "Summer Queen" stove, then the patent is clearly void, for a structure like the "Summer Queen" stove complained of as an infringement, was in public use and on sale in New York and Jersey City in 1872 and 1873, at the place of business of John A. Frey, the only difference between the structure of those days and the defendants' structure of the present day being that certain parts are now made of cast iron which in those days were made of sheet metal (pp. 89, 90, 80, 81, 83–85).

Frey sold those stoves under the name of the "Summer Queen." He afterwards became a member of the firm of C. Riessner & Co., the largest manufacturers of coal oil stoves in the country (pp. 85, 86). The

members of said firm, his successors in business, are now sued for selling "Summer Queen" stoves like those sold by their predecessor in 1872 and in 1873 prior to May 15th, on a patent, application for which was made October 4, 1875 (pp. 84, 85, 89, 90).

V.—THE DECREE OF THE CIRCUIT COURT SHOULD BE AFFIRMED WITH COSTS.

B. F. LEE,
Of Counsel.

119-631

Supreme Court of the United States.

No. 351, OCTOBER TERM, 1885.

JAMES L. SHARP,
Appellant,

vs.

CHRISTOPH RIESSNER AND CHARLES E. MEIER.

BOOK OF
APPELLEES' PATENT EXHIBITS.

NEW YORK:
EVENING POST JOB PRINTING OFFICE, BROADWAY AND FULTON STREET.
(Law Telephone 541.)

1886.

INDEX.

	Exhibits.	Offered. Page of Record.	Reproduced. Page of this Book.
Exhibit	Frey Canada Summer Queen Patent	67, 79	10
"	Mitchell Patent	79	31
"	Allen Water Bath Patent	58, 79	23
"	Billings' " "	54, 79	29
"	Bowles' Patent	41, 79	35
"	Frey Tom Thumb Patent	79	39
"	" Original Patent	40, 79	45
"	" Reissue	39	53
"	File Wrapper, &c., of Hutchins' Patent	79	1

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office of the File and Contents in the matter of the Letters Patent granted Abner B. Hutchins, May 16th, 1876, Number 177,384, for improvement in Hydrocarbon Stoves.

In testimony whereof I, R. B. Vance, Acting Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 6th day
[SEAL.] of September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

R. B. VANCE,
Acting Commissioner.

NEW YORK, Oct. 2d, 1875.

Hon. Commissioner of Patents,
Washington, D. C.,

Dear Sir:

Enclosed please find drawing and specification for application of A. B. Hutchins, for patent on "Improved Hydrocarbon Stove," together with certificate of deposit to your order, for $15, by S. S. Norton, which you will please apply to the payment of first patent fee in this case.

Respectfully Yours,
M. RANDOLPH,
Attorney.

No. 80 Broadway, Room 45,
New York City.

To the Commissioner of Patents:

Your petitioner, a resident of the City Brooklyn, in the State of New York, prays that Letters Patent may be granted to him for the invention set forth and described in the annexed specification.

ABNER B. HUTCHINS.

I hereby authorize M. Randolph, of No. 80 Broadway, New York City, to act as my attorney in presenting this application, to alter or amend the same and to receive the patent when granted.

ABNER B. HUTCHINS.

STATE OF NEW YORK, }
County of New York, } ss.:

ABNER B. HUTCHINS, the above-named petitioner, being duly sworn, deposes and says: That he verily believes himself to be the original and first inventor of the improvement in Hydrocarbon Stoves described and claimed in the subjoined specifications; that he does not know and does not believe that the same was ever before known or used; and that he is a citizen of the United States.

ABNER B. HUTCHINS.

Sworn to and subscribed }
before me, this 30th day }
of Sept., A. D. 1875, }

WM. DEL. BOUGHTON,
[SEAL.] Notary Public,
City and Co. of N. Y.

To all whom it may concern:

Be it known that I, Abner B. Hutchins, of the City of Brooklyn, in the County of Kings and State of New York, have invented a new and useful Improvement in Hydrocarbon Stoves, and I do hereby declare the following to be the specification of the same:

The object of this invention is to produce a stove which

can safely and easily be heated by the combustion of a hydrocarbon, or oil, in a similar manner to that in common use in illuminating lamps.

Erase and insert B. The invention consists in submerging the vessel or chamber containing the oil or hydrocarbon in water so as to always keep the said oil vessel or chamber cool, and thereby free from explosive or other accident. The water vessel is covered with a perforated metal plate, which forms the base of the hot air cylinder, on the top of which the culinary or other vessels to be heated are placed. Vertical tubes or flues are placed in the hot air cylinder in such positions as to act as chimneys for the burners. Mica windows are placed in the sides of these flues or chimneys in such positions as to enable the operator to observe the flame of the burner, and to regulate the same as circumstances may require.

The invention will be readily understood by reference to the accompanying drawings, of which Fig. 1 is partly an elevation, and partly a vertical section of the improved stove.

Fig. 2 is partly a plan and partly a section of the same. In this view the half of the top plate only is removed, so as to disclose the construction of the hot air cylinder and the flues or chimneys.

Fig. 3 is a sectional plan of the stove taken just below the top plate of the water chamber, and showing a part of the top plate of the oil vessel or reservoir broken out.

The base of the stove consists of a vessel, A, resting for convenience, on short legs, a. This vessel is intended to contain water, and has a top plate, A', which is preferably made of cast metal, and strong enough to support all the parts of the stove which are above it.

This plate A' is annular in form, if the stove is of general cylindrical construction (which is preferable to other forms) the central opening in the said plate being nearly equal in area to the sectional area of the hot air cylinder C, which rests upon it. Concentrically arranged around this central opening, are a series of perforations, a', through which atmospheric air passes down into the top part of the vessel A, and thence up through the hot air cylinder and its chimneys.

The reservoir or vessel *B*, in which the oil, or hydrocarbon is put for use in this stove, is placed within the vessel *A*, and the bottom of the vessel *A* may likewise constitute the support for the bottom of the vessel *B*, and there will be an intervening chamber, *B'*, between the sides of the vessel *B* and its enclosing vessel *A*, and the sides of the vessel *A* will extend up one or two inches (more or less) above the top of the vessel *B*. While in use the annular chamber *B'* will be filled with water, and water will also cover the top of the vessel *B*, which said vessel and its contained fluid will thereby be always kept at a low temperature, and accident from the ignition or explosion of the oil or hydrocarbon will thus be rendered impossible by this water covering. A tube, *b*, extends from the vessel *B* up through one of the perforations or apertures *a'*, and serves as a means of filling the vessel *B*. A suitable screw cap closes the top end of this tube. A pipe, or valve, a^2, leads from the chamber *B'* to the outside of *A* for the purpose of drawing off the water when it becomes heated, or when other occasion requires it. Water may easily be poured into the vessel *A* through the apertures *a'*.

The wick tubes *D* are attached to the top of the vessel *B*, and the wick used to conduct the oil from *B* to the flame is operated in the usual manner of illuminating lamps. The rollers for moving the wicks up and down are enclosed in casings, or housings, *E*, and are operated by the thumb-wheels *F*, the stems, *f*, of which pass through tubes, *E'*, that are attached tightly to the ends of the housings *E*, and pass through the side of the vessel *A*. Care must be taken to have all of the parts of *D*, *E*, *E'* that lie within the waterway of *A* perfectly water-tight, so as to prevent the leakage of the water either into the vessel *B*, or outside of *A*.

The hot air cylinder, *C*, is preferably built of sheet metal, and is hinged to its base plate *A'* by the hinge *c* at the back side of the stove, so as to permit the top parts of the stove to be tipped back out of the way of trimming the wicks, or for other purposes. A finely perforated diaphragm, *G*, covers the central opening of the base plate *A'*, below the hot air cylinder, for the purpose of properly

controlling the air currents that pass up from the chamber of *A* into the hot air cylinder. A diaphragm, *H*, within the hot air cylinder *C*, and near its base, is fixed by riveting, or otherwise, to the sides of the said cylinder. Portions of this diaphragm are formed into conical flame-caps, *h*, for controlling and confining the flame within its proper limits in a manner similar to that in common use in illuminating lamps.

Above the diaphragms *H*, tubes, or chimneys, *I*, confine the hot gases and products of combustion from the flames of the burners within proper limits for the efficient action of the burners. These tubes or chimneys *I*, extend from the diaphragm *H*, to the top of the hot air cylinder, and are preferably made of sheet metal. The shell of the hot air cylinder *C* forms one side of each of these chimneys, and in this side which is common to both the cylinder and the chimney, a small mica window, *K*, is placed, so as to enable the operator, from without, to see and regulate the flame of the burners by turning the thumb-wheel *F* as required. For simplicity of construction I cut apertures in the side of the hot air cylinder, suitable for the windows *K*, and through these apertures portions of the metal of the chimney plates are extended, which said portions are bent over in the form of grooves, *k*, as in Figs. 1 and 2, for the reception of the mica plates that are to form the windows.

The top of the hot air cylinder is covered with a cast metal plate, *L*, that serves as a rest for whatever vessel is to be heated on this stove. The plate *L* is perforated with apertures over the chimneys, and also over the hot wells of the cylinder *C*, as well as in the portions lying outside of the cylinder, thus permitting all of the heat generated to reach the vessel on top of the plate *L*, and thereby be utilized. The intense heat imparted to the plates of the chimneys *I* and plate *L* and reflected thence back upon the hot gases passing through and about these parts will be quite sufficient to consume all of the smoke, and there will in consequence be no emission of unpleasant odors from imperfect combustion.

The top surface of the plate *L* is provided with ridges

l that keep the vessels placed thereon from obstructing the openings in the said plate.

Having described my invention, I claim 1st, the reservoir or vessel B, which contains the oil or hydrocarbon, of a hydrocarbon stove, submerged in water in a surrounding vessel A, as described and set forth.

Erase and insert I.

2d I claim the tubes or chimneys I, surrounded by and attached to the hot air cylinder C, in the manner and for the purpose set forth.

3d. I claim the windows K, in combination with the chimneys I, in the manner and for the purpose set forth.

4th. I claim the perforated plate A^1, arranged to form the top of the vessel A. and the base plate of the hot air cylinder C, as and for the purpose set forth.

ABNER B. HUTCHINS.

Witnesses:
J. H. COLTON,
M. RANPOLPH.

U. S. PATENT OFFICE,
WASHINGTON, D. C., Oct. 6, 1875.

ABNER B. HUTCHINS,
Care M. Randolph,
80 Broadway, Room 45,
N. Y. City.

Application for "Hydro Carbon Stoves,"
Filed Oct. 4th, 1875.

The first claim is refused for lack of novelty. See patent to J. Allen, No. 50,087, Sept., 26, 1865, (extinguishers).

Claims 2 and 3 are met in patent to Thorp, 129,436, July 16, 1872, (lamp stoves), and to Bowles, 111,512, Feb. 7, 1871, (same class).

Claim 4 is met in the last two references above cited, and in patent to Allen, 166,740, Aug. 17, 1875, (do.) See also patent to Frey, 156,149, Oct. 20, 1874.

Patent to Cooper 128,022, June 18, 1872, (do.) is also cited in connection with claim one.

2395.
W. OSGOOD.

B. R. CATLIN, Asst.

NEW YORK, Nov. 1st, 1875.

Hon. Commissioner of Patents,

Sir:

In relation to the pending application of A. B. Hutchins for patent on hydrocarbon stove, filed Oct. 4th, 1875, and rejected Oct. 6th, it is respectfully submitted:

First, that the reference cited as objection to the first claim is entirely pertinent to the case, and the first claim is therefore withdrawn.

Second, that the references to the remaining claims are not believed to be good cause for the rejection of them, as the construction of the parts in the case in question is entirely different from that in the references cited. With reference to the chimneys, in particular, there is neither of the references in which the hot air cylinder forms a part of the chimney, as in the case in the Hutchins stove. His is certainly peculiar in this respect, and the advantages of his construction, in a *simple*, *cheap* stove are such as not only to present a patentable feature, but also to so cheapen and benefit the construction as to render the invention one of real merit. Please to observe how the side walls of the chimneys are joined to and connected with the walls of the hot air cylinder by means of the groove-pieces *k*, that form the seats for the mica windows. Only *one* mica window is required in this case, while in the references cited it is required to have *two*, one in the chimney and one in the hot air cylinder.

The whole form of the stove, commencing with the perforated plate *A'*, is greatly improved in the present case, over any of those cited in the references, and this general improvement is believed to be patentable in the form now presented.

The claim, as re-written, it is hoped will meet with the approbation of the Hon. Examiner.

Respectfully yours,

M. RANDOLPH,
No. 80 B'way, N. Y. City.

Hon. Commissioner of Patents:

I hereby amend my application for patent on "hydro-

carbon stoves," filed Feb. 4th, 1875, and rejected Oct. 6th, as follows. I will change the 14th, 15th and 16th lines of the first page of the specification so as to read:

B. "The invention consists of the following devices: The vessel or chamber containing the oil or hydrocarbon is submerged in water so as to" I will also further amend by striking out the claims appended to the said specifications, and by substituting in lieu thereof the following claims, viz.:

A. 1st. I claim the water vessel *A*, with its perforated top-plate *A'* and ——— hot air cylinder *C*, hinged at *c* to plate *A'* and top perforated plate *L*, all arranged and connected together substantially as and for the purpose set forth.

2d. I claim the chimneys *I*, having one of their sides formed by the hot air cylinder *C*, to which they are connected by the groove-clips *k*, that also receive the mica windows *K*, as and for the purpose set forth.

Respectfully yours,

ABNER B. HUTCHINS,
By M. RANDOLPH.

NEW YORK, May 5th, 1876.

Hon. Commissioner of Patents,

Dear Sir.

Enclosed please find certificate for final fee for patent on "Hydrocarbon Stoves," allowed Nov. 6th, 1875, to A. B. Hutchins.

Please send the patent to me as below.

Yours respectfully,

M. RANDOLPH,
80 Broadway, Room 45.

UNITED STATES PATENT OFFICE.

No. 177,334.
Date, May 16, 1876.
Inventor, A. B. Hutchins.

Papers in file: Six (6) also
Printed spec. and drg.

Papers wanting:

Examined Feb. 15th, 1882, by
F. A. SPEARE,
File Clerk.

16
$\frac{}{523\,95}$ 1875. Osgood.
(65.) 2
No. 177,334.

ABNER B. HUTCHINS,
Of Brooklyn,
County of Kings,
State of New York.

HYDRO CARBON STOVES.

Rec'd Oct. 4, 1875.
Petition, " " "
Affidavit, " " "
Specification, " " "
Drawing, " " "
Model, " " "
Cert. dep.
Cash $15, October 4, 1875.
Add'l fee cert. $20, May 6, 1876.
" " cash.
Examined Nov. 5, 1875, W. Osgood.
Issue, Nov. 5, 1875, Grinnell.
3. Patented May 16, 1876.
Circular Nov. 6, 1875.
" " 17, "

M. RANDOLPH,
80 Broadway,
Room 45, N. Y. City.

1875.
Contents.

Application, 2 papers.
Rejected Oct. 6, 1875.
Amendment Nov. 3, 1875.

126 Stoves and Furnaces,
Lamp Stoves.

Title:
Improvement in
Hydro Carbon
Stoves.

Certified that the annexed is a true copy of a patent registered in the Patent Office under number 2,366, granted to James Henry Thorp, and bearing date the fifteenth day of May, 1873, for "The Summer Queen Improved Coal Oil Stove," with true copies of the specification and drawings remaining on record in this office, duplicate copies of which were attached to the patent above mentioned.

DEPARTMENT OF AGRICULTURE,

PATENT OFFICE.

OTTAWA, CANADA, September 15, 1886.

As witness the seal of the Patent Office hereto affixed.

[SEAL.] A. S. CAMBIE,
Acting Deputy Commissioner of Patents.

SPECIFICATION.

To all whom it may Concern:

Be it known that I, John Augustus Frey, of Jersey City, in the County of Hudson and State of New Jersey, one of the United States of America, mechanic, have invented certain new and useful improvements on "Coal Oil Stoves," and I do hereby declare that the following is a full, clear and exact description of the same.

The first part of my invention relates to a means whereby the wick tubes above the oil chamber of a coal oil stove can be surrounded with water, thus dispensing with the use of water wicks for keeping the wick tubes cool, and it consists in the application to the wick tubes and base of water chamber of an angularly arranged casing to enclose the ratchet wheels of the wick tubes and employment of a tubular connection of the said casing with the outer wall of the water chamber for enclosing the shafts of the ratchet wheels, to prevent water passing through the

apertures for such wheels in the wick tubes to the oil chamber.

The second part of my invention relates to the manner of supporting the base rim or ring on which the chimney rests by struts from the walls of the water chamber, whereby the weight of the chimney and cooking utensil placed thereon is removed from the bottom of the water chamber and thrown against the wall; thus rendering the construction of that part of the stove more durable.

The third part of my invention relates to hinging the chimney to its base ring or to a strut secured to the walls or bottom of the water chamber, whereby the chimney flues are kept in a proper position over the wick tubes without requiring special adjustment after lighting the wicks.

Fig. 1 is a transverse verticle section of a coal oil stove embodying my invention on the lines *a*, *a*, of Fig. 2; Fig. 2 is a tranverse verticle section on the line *b*, *b* of Fig. 1.

A is the oil chamber, *B* the wick tubes, *C*, *C* the ratchet wheels, and *D*, *D* the shafts for operating the wheels *C*, all constructed and arranged in the ordinary manner.

F is the water chamber, the wall of which rises to a suitable height above the oil chamber, and not exceeding the base rim *J* of the chimney.

G, *G* are water-tight casings, secured in the angle formed by the wick tubes and bottom of water chamber, enclosing the ratchet wheels *C*, *C* to exclude water placed in the chamber *F* for cooling the wick tubes, from entering the oil chamber by the apertures in wick tubes in which the ratchets operate. The casings *G*, *G* extend the whole breadth of the wick tubes and their ends are closed water-tight, thus forming a water-tight compartment or chamber enclosing the ratchet wheels.

To one end of the casings *G* is secured a water-tight connection *H*, passing through the wall of the water chamber, and enclosing the shafts *D*, *D* of the ratchets so that the shafts can be operated in the usual manner for raising and lowering the wicks, without the possibility of admitting water within the casings.

I are struts, of any required number or form, secured to the wall of the water chamber, placed inclinedly inward

and fastened to the rim or ring *J*, on which the chimney *N* rests, to support said rim or ring fixedly over the wick tubes.

The weight of the chimney and of any utensil placed thereon is thus thrown outwardly against the wall of the water chamber, and the pressure of such weight removed from the bottom of the water chamber, thereby rendering that part of the stove more durable.

K is a hinge connecting the chimney to a strut *L* secured to the wall of the water chamber and which strut may be further secured by a brace *M* bearing on the bottom of the water chamber or other convenient arrangement, or the chimney may be hinged to the rim or ring *J*, as before described.

By hinging the chimney to a stationary or fixed support, the flues are kept in position to close over the wicks without special adjustment when shutting down the chimney after lighting the wicks.

Fig. 2 shows the chimney as partly raised for lighting wicks.

I claim as my invention:

1st. The water-tight casings *G*, *G*, and tubular connections *H*, *H*, secured to the wick tubes and bottom of water chamber, and enclosing the ratchet wheels *C*, *C* and shafts *D*, *D* as and for the purposes set forth.

2d. The struts *I*, applied as set forth, for supporting the chimney ring *J* from the wall of the water chamber as described.

3d. In hinging the chimney *N* to a strut *L*, or its equivalent for the purpose set forth.

JOHN A. FREY.

JERSEY CITY, }
April 17, 1873, }

Signed in the presence of
ELISHA COLE,
DAVID WOOD.

This is the specification referred to in the affidavit of John Augustus Frey, hereunto annexed.

Sworn before me, this 24th day of April, 1873, at Her Britannic Majesty's Consulate General, New York,

E. M. ARCHIBALD,
H. B. M. Consul General,
New York.

No. 2,366.

CANADA.

PATENT OF INVENTION.

WHEREAS, James Henry Thorp, of the City of Ottawa, in the County of Carleton, in the Province of Ontario, gentleman, has, in pursuance of "The Patent Act of 1872," by his petition to the Commissioners of Patents, state that one John Augustus Frey, of Jersey City, in the County of Hudson, in the State of New Jersey, one of the United States of America, mechanic, has invented new and useful improvements on coal oil stoves, the title or a name whereof is, "The Summer Queen Improved Coal Oil Stove," and in effect that by instrument dated on or about the tenth day of April in the year of Our Lord one thousand eight hundred and seventy-three, the said John Augustus Frey has assigned to the petitioner, James Henry Thorp, the right of obtaining the patent and the exclusive property in the said invention, and that such the invention of the said John Augustus Frey, was not known or used by others, before the said John Augustus Frey's invention thereof, and not being at the time of the present application, in public use, or on sale for more than one year previous to this said application, in Canada, with his consent or allowance, and that the said James Henry Thorp has elected his domicile at the City of Ottawa, in the Province of Ontario, in Canada;

AND WHEREAS, the said James Henry Thorp has also complied with the other requirements of the said act;

THE PRESENT PATENT GRANTS to the said James Henry Thorp, his executors, administrators and assigns, for the period of five years from the date of these presents, the exclusive right, privilege, and liberty of making, constructing and using and vending to others, to be used the said invention of John Augustus Frey, and which is called or known by the title or names of "The Summer Queen Improved Coal Oil Stove," and whereof a short description is as follows :

It consists, 1st. In the water-tight casings *G*, *G*, and tubular connections, *H*, *H*, secured to the wick tubes and bottom of water chamber and enclosing the ratchet wheels *C*, *C*, and shafts *D*, *D*; 2d. In the struts *I*, applied as set forth for supporting the chimney ring *J*, from the wall of the water chamber; and 3d. In hinging the chimney *N* to a strut *L*, or its equivalent for the purpose set forth.

But for fuller detail of the invention, reference must be had to the specification and drawing, one duplicate whereof is hereunto annexed, and forms an essential part of this patent.

PROVIDED, that the grant hereby made is subject to adjudication before any Court of competent jurisdiction. And further, that this patent is subject to the condition that the same and all the rights and privileges hereby granted, shall cease and determine, and the patent shall be null and void at the end of two years from the date hereof unless the patentee, his executors, administrators, or his assignee or assignees, shall within that period have commenced, and shall after such commencement continuously carry on in Canada, the construction or manufacture of the invention hereby patented in such manner that any person desiring to use it, may obtain it, or cause it to be made for him at a reasonable price, at some manufactory or establishment for making or constructing it in Canada.

AND FURTHER that this patent shall be void if, after the expiration of twelve months from the granting hereof, the patentee, his executors or administrators, or his assignee or assignees, for a whole or a part of his interest, in the patent,

imports, or causes to be imported into Canada, the invention for which this patent was granted.

IN TESTIMONY WHEREOF the Honorable John Henry Pope, Commissioner of Patents, has hereunto signed his name, and the seal of the [L. S.] Patent Office has been hereunto affixed, at the City of Ottawa, in the Dominion of Canada, this fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-three.

J. H. POPE.

Countersigned,
J. C. TACHE,
Deputy Commissioner.

Extended for a second period of five years under No. 8,496 from the fifteenth day of May one thousand eight hundred and seventy-eight.

J. C. TACHE,
Deputy Commissioner.

Extended for a third period of five years under No. 8,497 from the fifteenth day of May one thousand eight hundred and eighty-three.

J. C. TACHE,
Deputy Commissioner.

(Endorsed)—Canada. Patent of Invention in favor of James Henry Thorp, assignee of John Augustus Frey, for "The Summer Queen Improved Coal Oil Stove." Issued on the 17th day of May, 1873, and registered under No. 2,366 in the Patent Office at Ottawa.

J. C. TACHE,
Deputy Commissioner.

No. 8,496.

CANADA.

Extension of Duration of Patent.

Whereas, by "The Patent Act of 1872," it is amongst other things provided that Patents of Invention or Discovery, issued by the Patent Office, shall be valid for a period of Five, Ten, or Fifteen years, but at or before the expiration of the said Five or Ten Years, the holder thereof may obtain an extension of the patent for another period of Five Years, and after those second Five Years, may again obtain a further extension for another period of Five Years, but not in any case to exceed a total period of Fifteen Years.

And Whereas, a patent bearing date on the fifteenth day of May, in the year of Our Lord one thousand eight hundred and seventy-three, was granted to James Henry Thorp, of the City of Ottawa, in the County of Carleton, in the Province of Ontario, gentleman, as assignee of John Augustus Frey, of Jersey City, in the County of Hudson, in the State of New Jersey, one of the United States of America, mechanic, for a period of five years from the date of the said patent of invention, therein called or known by the title or name of "The Summer Queen Improved Coal Oil Stove."

And Whereas, by an instrument dated the first day of August, in the year of Our Lord one thousand eight hundred and seventy-three, the said James Henry Thorp, has assigned, transferred and set over unto Frank Harris Thorp, of the City of Chicago, in the State of Illinois, one of the United States of America, dry-goods clerk, all his right, title, interest and demand of, in, and to the said invention, described and named in the said patent of invention, as also the said patent and any extention thereof.

And Whereas, by subsequent instrument, dated the ninth day of August, in the year of Our Lord one thousand eight hundred and seventy-three, the said Frank Harris Thorp, has assigned, transferred and set over to one

James Bailiff and Robert Charles William MacCuaig, of the City of Ottawa, in the Province of Ontario, gentlemen, all his right, title, interest and demand, of, in and to the said invention, described and named in the said patent of invention, as also the said patent and any extension thereof.

And Whereas, by subsequent instrument, dated the fourteenth day of August, in the year of Our Lord one thousand eight hundred and seventy-four, the said Robert Charles William MacCuaig, has assigned, transferred and set over unto James Bailiff, aforesaid, all his right, title, interest and demand, of, in, and to the said invention, described and named in the said Patent of Invention, as also the said Patent and any extension thereof, and which Patent was and is subject to the provisos therein contained.

The Present Patent Grants to the said James Bailiff, his executors, administrators and his assigns, for another period of Five Years, to commence and be computed on and from the fifteenth day of May, in the year one thousand eight hundred and seventy-eight, the exclusive right, privilege and liberty of making, constructing and using, and vending to others to be used, the said invention of John Augustus Frey, and which is called or known by the title or name of "The Summer Queen Improved Coal Oil Stove," and whereof a short description is as follows:

It consists, 1st, in the water-tight casings *G*, *G*, and tubular connections *H*, *H*, secured to the wick tubes, and bottom of water chamber, and enclosing the ratchet wheels *C*, *C*, and shafts *D*, *D*; 2d. In the struts *I*, applied as set forth for supporting the chimney ring *J*, from the wall of the water chamber; and 3d, in hinging the chimney *N*, to a strut *L*, or its equivalent for the purpose set forth, and which said first named Patent was issued to the said James Thorp, as Assignee of the said John Augustus Frey, on the fifteenth day of May, in the year of Our Lord one thousand eight hundred and seventy-three, bearing the number 2,366, and under the signature of the Honorable John Henry Pope, Commissioner or Patents and countersigned by J. C. Taché, Deputy Commissioner, and is hereunto annexed, under the Seal of the Patent Office, and this extension of duration of Patent is granted subject to the

provisos and conditions in the original Patent hereunto annexed, mentioned and contained.

IN TESTIMONY WHEREOF, the Honorable Charles Alphonse Pantaléon Pelletier, Commissioner of Patents, has to this extension of duration of Patent, in duplicate, signed his name, and [L. S.] the Seal of the Patent Office has been hereunto affixed at the City of Ottawa, in the Dominion of Canada, this sixth day of March, in the year of Our Lord one thousand eight hundred and seventy-eight.

C. A. P. PELLETIER.

Countersigned,
[L. S.] J. C. TACHE,
Deputy Commissioner.

(Endorsed)—Canada. Extension of Duration of Patent in favor of James Bailiff, for "The Summer Queen Improved Coal Oil Stove." Issued on the 6th day of March, 1878, and registered under No. 8,496 in the Patent Office at Ottawa.

J. C. TACHE,
Deputy Commissioner.

No. 8,497.

CANADA.

EXTENSION OF DURATION OF PATENT.

WHEREAS, by "The Patent Act of 1872," it is amongst other things provided that Patents of Invention or Discovery, issued by the Patent Office, shall be valid for a period of Five, Ten, or Fifteen Years, but at or before the expiration of the said Five or Ten Years, the holder thereof may obtain an extension of the Patent for another period

of Five Years, and after those second Five Years, may again obtain a further extension for another period of Five Years, but not in any case to exceed a total period of Fifteen Years.

AND WHEREAS, a Patent bearing date on the Fifteenth day of May, in the year of Our Lord one thousand eight hundred and seventy-three, was granted to James Henry Thorp, of the City of Ottawa, in the County of Carleton, in the Province of Ontario, gentleman, assignee of John Augustus Frey, of Jersey City, in the County of Hudson, in the State of New Jersey, one of the United States of America, mechanic, for a period of Five Years from the date of the said Patent of Invention, therein called or known by the title or name of "The Summer Queen Improved Coal Oil Stove."

AND WHEREAS, by instrument dated the first day of August, in the year of Our Lord one thousand eight hundred and seventy-three, the said James Henry Thorp, has assigned, transferred, and set over unto Frank Harris Thorp, of the City of Chicago, in the State of Illinois, one of the United States of America, dry-goods clerk, all his right, title, interest and demand, of, in and to the said invention, described and named in the said Patent of Invention, as also the said Patent and any extension thereof.

AND WHEREAS, by subsequent instrument, dated the ninth day of August, in the year of Our Lord one thousand eight hundred and seventy-three, the said Frank Harris Thorp, has assigned, transferred, and set over unto James Bailiff and Robert Charles William MacCuaig, both of the City of Ottawa, in the Province of Ontario, gentlemen, all his right, title, interest and demand, of, in and to the said invention, described and named in the said Patent of Invention, as also the said Patent and any extension thereof.

AND WHEREAS, by subsequent instrument, dated the fourteenth day of August, in the year of Our Lord one thousand eight hundred and seventy-four, the said Robert Charles William MacCuaig, has assigned, transferred, and set over unto James Bailiff, aforesaid, all his right, title,

interest, and demand, of, in and to the said invention, described and named in the said Patent of Invention, as also the said Patent and any extension thereof, and which Patent was and is subject to the provisos therein contained.

AND WHEREAS, a Patent bearing date the sixth day of March, in the year of Our Lord one thousand eight hundred and seventy-eight, was granted to the said James Bailiff, extending the duration of the said Original Patent for the Period of Five Years from the fifteenth day of May, in the year of Our Lord one thousand eight hundred and seventy-eight, subject to the provisos in the said Original Patent mentioned and contained.

THE PRESENT PATENT GRANTS to the said James Bailiff, his executors, administrators and his assigns, for another period of Five Years, to commence and be computed on and from the fifteenth day of May, which will be in the year one thousand eight hundred and eighty-three, the exclusive right, privilege and liberty of making, constructing and using, and vending to others to be used, the said invention of John Augustus Frey, and which is called or known by the title or name of "The Summer Queen Improved Coal Oil Stove," and whereof a short description is as follows:

It consists, 1st. In the water-tight casings *G*, *G*, and tubular connection *H*, *H*, secured to the wick tubes, and bottom of water chamber, and enclosing the rachet wheels *C*, *C*, and shafts *D*, *D*; 2d. In the struts *I*, applied as set forth for supporting the chimney ring *J*, from wall of the water chamber; and 3d, in hinging the chimney *N*, to a strut *L*, or its equivalent, for the purpose set forth, and which said first named Patent was issued to the said James Henry Thorp, as assignee of the said John Augustus Frey, on the fifteen day of May, in the year of Our Lord one thousand eight hundred and seventy-three, bearing the number 2,366, and under the signature of the Honorable John Henry Pope, Commissioner of Patents, and countersigned by J. C. Tache, Deputy Commissioner, and is hereunto annexed, under the Seal of the Patent Office, and this extension of duration of Patent is granted subject to

the provisos and conditions in the original Patent hereunto annexed, mentioned and contained.

IN TESTIMONY WHEREOF, the Honorable Charles Alphonse Pantaléon Pelletier, Commissioner of Patents, has to this extension of duration of Patent, in duplicate, signed his name, and [L. S.] the Seal of the Patent Office has been hereunto affixed at the City of Ottawa, in the Dominion of Canada, this seventh day of March, in the year of Our Lord one thousand eight hundred and seventy-eight.

C. A. P. PELLETIER.

Countersigned,

[L. S.] J. C. TACHE,
Deputy Commissioner.

(Endorsed)—Canada. Extension of Duration of Patent in favor of James Bailiff, for "The Summer Queen Improved Coal Oil Stove." Issued on the 17th day of March, 1878, and registered under No. 8,497 in the Patent Office at Ottawa.

J. C. TACHE,
Deputy Commissioner.